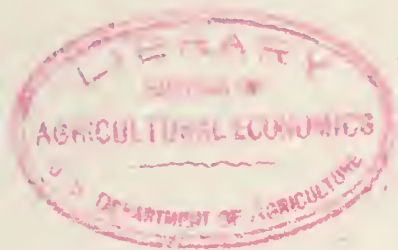


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THE COLLECTION OF RURAL REAL PROPERTY TAXES IN ILLINOIS

By
Dwight P. Flanders
Graduate School, Department of Economics
University of Illinois
with the collaboration of
Melville C. Williams
Assistant Economist
Bureau of Agricultural Economics

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THE COLLECTION OF RURAL REAL PROPERTY TAXES IN ILLINOIS

FOREWORD

It is not within the province of this report to discuss remodeling the basic structure of Illinois tax laws. Its purpose is rather to examine existing procedure for collecting delinquent rural real property taxes, and to suggest changes both for improving its operation and for facilitating the adequate handling of the problems created by chronically delinquent lands. It has been necessary to omit from consideration numerous statutory provisions relating to special assessments, as well as many applying to Cook County only.

This report has been prepared to a large extent from material presented in a thesis entitled, "Tax Delinquency and Tax Titles of Rural Real Property in Illinois" by Dwight P. Flanders, submitted in partial fulfillment of requirements for the degree of Master of Arts in Economics in the Graduate School of the University of Illinois, 1937. The Graduate School has kindly consented to the present use of that material. Thanks for assistance and advice are due to Professors Marlin H. Hunter and Pembroke H. Brown of the University of Illinois, and Professor H.K. Allen, now of the same University who was a member of the staff of the Land Use Planning Section, Resettlement Administration, Region III, when the thesis was written. Acknowledgement is also made to various members of the staff of the Bureau of Agricultural Economics, for the critical review of the manuscript.

INTRODUCTION

DELINQUENCY, ASSESSMENT, AND COLLECTION PROCEDURE

Amount of Tax Delinquency in Illinois

Although it would be a waste of effort to be greatly concerned about some small degree of tax delinquency that may be merely evidence that the tax system has not attained perfection, delinquency has gone beyond this point in Illinois and indicates the presence of fundamental defects. Data upon the delinquency of rural real property taxes in Illinois are not available for the State as a whole but they are available for 15 counties that are believed to be fairly representative. ^{1/} In these counties, the amount of delinquency upon the 1932 levy was 652 percent of that upon the 1928 levy, and although only 1.0 percent of the area in farms was delinquent for 1928, 9.2 percent was delinquent for 1932. Although subsequent data are not available, it is believed that the peak of delinquency was reached in 1933 (on the 1932 levy), and that a slight decline occurred in 1934. Table 1 indicates the total delinquency of rural real estate taxes in the 15 counties by year of levy, 1928-32.

Table 1. -- Total delinquency of rural real estate taxes, 15-county total, by year of levy, 1928-32

Year of levy	Properties involved			Amount of taxes delinquent
	Units	Acres	Assessed valuation	
	Number	Number	1,000 dollars	Dollars
1928	629	55,745	1,729	51,271
1929	1,262	112,485	3,466	110,528
1930	1,825	183,695	5,685	183,188
1931	4,262	456,986	13,560	371,856
1932	5,164	526,060	14,132	385,756

^{1/} The counties are Champaign, Christian, DeKalb, Fulton, Henry, Jackson, Jo Daviess, Johnson, Livingston, Marion, Pike, Pope, St. Clair, Washington, and White. The data covering tax delinquency in these 15 counties were published January 14, 1936, by Bureau of Agricultural Economics as a mimeographed publication entitled, "Tax Delinquency of Rural Real Estate in 15 Illinois Counties, 1928-33." All data in this publication covering the amount of delinquency in Illinois are from that report.

Any of a number of causes may be responsible for or may have contributed in some material way to the present delinquency situation. The economic stress of recent years has without doubt played a major part; but other facts have made their contribution in varying degrees. Among those which might be mentioned are: the incapacity of certain lands, because of submarginality, improper utilization or other reasons, to yield an adequate income; inequitable assessments and over-taxation; and legislative concessions that encourage non-payment. Tax laws may or may not give rise to delinquencies, for no matter how perfect the laws and their administration, it may still be impossible or unwise to pay taxes. Inadequate or faulty tax laws, however, certainly do not facilitate payment.

Procedure of Assessing and Levying Taxes

This study is limited to the procedure subsequent to the time taxes are due and unpaid, but it might be well to review briefly the proceedings before that date. Although many serious defects may arise in the assessment or levy that will invalidate the collection proceedings, no attempt will be made to discuss them here.

The value of real estate is arrived at by the assessment procedure for the purpose of determining the size of the tax base upon which to levy a certain tax. Since the task of valuing all realty in the State is too great to be performed annually, it is done every four years. 2/ In the 15 counties having a county type of organization, 3/ the assessment is conducted by the county treasurer or his deputies, while in counties under the township form of organization, the county treasurer is the supervisor of the township assessors. 4/ When the assessment has been made, it becomes the duty of the county board of review to hear all complaints and make the necessary adjustments. 5/ The State Tax Commission then equalizes such assessments between counties, 6/ and has the power to order a reassessment. 7/ After the real property tax base has been thus valued, it becomes the duty of the taxing bodies to fix a rate and levy a tax upon the base.

The State has levied no real property tax since 1932, when the sales tax was substituted. The county makes its levy in September, at the meeting of the county board which convenes on the third Monday in September in counties under the commission organization, and the second Tuesday in September under the township form of organization.

2/ Ch. 120, secs. 288 and 291, Ill. Rev. Stat. 1937.

3/ Alexander, Calhoun, Edwards, Hardin, Massac, Menard, Monroe, Morgan, Perry, Pope, Pulaski, Randolph, Scott, Union, and Wabash.

4/ Ch. 120, secs. 280 and 281, Ill. Rev. Stat. 1937.

5/ Ch. 120, sec. 314, Ill. Rev. Stat. 1937.

6/ Ch. 120, sec. 355, Ill. Rev. Stat. 1937.

7/ Ch. 120, sec. 349, Ill. Rev. Stat. 1937.

The town, or township, makes its levy the first Tuesday in April; 8/ the school districts on or before the second Monday in August; 9/ and the non-high school districts on or before the first Tuesday in October. 10/ Then there is the road and bridge levy which is made the first Tuesday in September, 11/ and cities and villages under 150,000 make their levy on or before the third Tuesday in September. 12/ Thus, each of these taxing jurisdictions has a different time at which to levy its tax. Taxes levied in 1937 are for the fiscal year of 1938-1939, and it is worth noting that the fiscal years are all different except the State and the school district.

When the assessment and levy are completed, the county clerk extends the rates to the assessed property. 13/ The date for this is indefinite, but in practice, rates are usually computed between November 1 and December 31 of the year in which the property is assessed. In recent years it has actually been later, even though the collector is supposed to receive his books by December 31. 14/ The following year the taxes become due in two installments, on June 1 and September 1 respectively. 15/ Taxes are delinquent when the installments are due and unpaid, 16/ but become a lien on the property on April 1 of the year in which they are levied. 17/ Thus, the lien exists for a year and two months before any of the taxes are collected, and for a year and five months before the second installment is due.

Another aspect of the collection procedure up to the point of delinquency is the inclusion of all delinquent lands upon the rolls for the current year. This is an unnecessary inflation of the tax base, for land that is chronically delinquent, say for longer than 3 years, is unlikely to pay the current levy. Taxing bodies must either take unofficial notice of this situation and levy a higher rate in compensation, or finish the year with a deficit. 18/ In normal times the payment of delinquent taxes from 1 or 2 years in arrears, just about offsets the current delinquency.

8/ Ch. 139, secs. 39 and 50, Ill. Rev. Stat. 1937.

9/ Ch. 122, sec. 82, Ill. Rev. Stat. 1937.

10/ Ch. 122, sec. 102, Ill. Rev. Stat. 1937.

11/ Ch. 121, sec. 56, Ill. Rev. Stat. 1937.

12/ Ch. 24, sec. 123, Ill. Rev. Stat. 1937.

13/ Ch. 120, sec. 330, Ill. Rev. Stat. 1937.

14/ Ch. 120, sec. 123, Ill. Rev. Stat. 1937. Ch. 120, sec. 267, provides that failure to deliver the collector's books on time shall not affect the validity of the assessment or levy.

15/ Ch. 120, sec. 165, Ill. Rev. Stat. 1937. (This section also states a conflicting set of installment dates, Feb. 1 and Aug. 1, but June and September appear to be correct.)

16/ Ibid.

17/ Ch. 120, sec. 238, Ill. Rev. Stat. 1937.

18/ Another cause contributing to deficit financing by local units is the lack of coincidence between their fiscal years and the tax collection dates.

Survey of Collection Procedure in Illinois

The right of the State to sell land for which the taxes are delinquent is not specifically authorized by the Constitution of the State of Illinois, but is implied by that document. It is proper that the State be able to enforce the collection of its taxes; indeed it is necessary to the existence of every government, and is based upon the principle of self-preservation. This does not mean, however, that the landowner should be deprived of his property without a fair chance to protect his interest. Substantial protection is afforded by common law, but the Illinois statutes give him so much protection that purchasers at tax sales are in an uncertain and highly speculative position. Litigation is frequent, and the abundance of cases arising under the taxation statutes serves to indicate some of the points where tax titles are weakest.

At common law, both real and personal property taxes were collected from the personal property of the taxpayers. Illinois statutes, however, provide that real property shall be liable for its own taxes and for delinquent personal property taxes in the event that the latter cannot be collected out of the personalty, or the owner moves from the taxing jurisdiction. 19/ The county is the basic unit in Illinois for the levy and collection of real property taxes. 20/ As noted above, there are two types of county political organization: in the 15 counties 21/ under the county type of organization, the sheriff is the collector of taxes, while in those under the township type, the county treasurer performs this function. 22/

Liability for payment of real property taxes rests upon the person who owns the land on April 1. 23/ Should taxes remain unpaid on September 1, 24/ when the second installment becomes due, the following steps are taken:

(1) Some time during September, the county collector publishes a list of delinquent lands and a notice that he will ask the county court for a judgment ordering their sale.

(2) The county court renders a judgment ordering the sale of all lands the owners of which do not appear and successfully contest the proposed judgment.

19/ Ch. 120, secs. 171 and 240, Ill. Rev. Stat. 1937.

20/ Ch. 34, sec. 23, Ill. Rev. Stat. 1937.

21/ See footnote no. 3.

22/ Ch. 120; secs. 128 and 132, Ill. Rev. Stat. 1937.

23/ Ch. 120, secs. 62 and 63, Ill. Rev. Stat. 1937, give the date as May first, although others, ch. 120, secs. 238 and 287, give the date as April first. The latter date is probably correct.

24/ This date seems to be the most probable interpretation of the conflicting 1935 amendments to ch. 120, secs. 150 and 165, Ill. Rev. Stat. 1937.

(3) The tax sale is held and delinquent lands are sold to the bidder who will pay the taxes due and accept the lowest sum as a penalty. All land on which no bid is made is forfeited to the State.^{25/} Although the statutes and this report speak of a sale of the land, the sale passes no title. A certificate of sale, rather than the land, is the thing actually sold. (See the discussion on page 19.)

(4) Land forfeited to the State may be redeemed at any time, but land sold to a private purchaser must be redeemed within 2 years from the sale. When redeeming, the original owner must pay certain penalties in addition to the delinquent taxes.

(5) If no redemption occurs, the purchaser at the tax sale may obtain a tax deed by complying with certain formalities, such as serving a notice of expiration of the redemption period upon the original owner, etc. The State does not obtain title to the land, as a rule, but may occasionally do so by means of a rather complicated procedure.

STATUTORY PROVISIONS FOR THE COLLECTION OF DELINQUENT TAXES IN ILLINOIS

History of Organic Provisions

The earliest civil administration of Illinois was under the Ordinance of 1787, which made no reference to delinquent taxes, and only briefly referred to the general subject of taxation by providing in Article IV for the collection of taxes to help pay the national debt. Such taxes were to be "laid and levied by authority and direction of the legislatures of the district or districts, or new states, as in the original states . . ." Subsequent ordinances divided the Northwest Territory but omitted any reference to delinquent taxes. Even the Constitution of 1818 established no regulations relating to collection procedures, although Article II provided for raising revenue, and Section 3 of the Schedule referred to the "Sheriff or collector of public money." The Constitution of 1848, however, expressly recognized the fact that some taxes would remain unpaid. Article IX, Section 4, required purchasers at tax sales to serve notice of redemption upon the person in whose name the land was taxed as a condition precedent to obtaining tax deeds. The defeated Constitution of 1862 had a similar provision in Article VII, Section 7.

The present Constitution of 1870 goes into more detail concerning delinquent lands. Article IX, Section 4, states that a return of unpaid taxes shall be made to some officer of the county having authority to receive State and county taxes, and that "there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order or judgment of some court of record." Although the power to sell delinquent real estate is not expressly granted, it is implied

^{25/} The State does not obtain title to land forfeited to it, but only secures a lien against it. This matter is more fully discussed on p. 20.

since this section imposes limitations and restrictions upon the exercise of the power. 26/ Article IX, Section 5, requires that the sale be followed by a two-year redemption period, during which the former owner may redeem his property. This section also requires a notice of expiration of the redemption period to be given owners or interested parties, and provides that such notice must be personally served upon the occupant of the land. All of these provisions are more concerned with protecting the landowner than with collecting revenue.

Judgment Authorizing Sale of Land for Taxes

Nature of judgment proceeding

The judgment of sale is not one against the landowner (technically known as a judgment in personam) but is against the land (technically known as a judgment in rem). 27/ Because of this fact the judgment does not create any personal liability of the landowner to pay; 28/ and the court may obtain jurisdiction to render the judgment by means of a published notice only.

Procedure of obtaining judgment

The county collector, some time during the month of September next after the taxes are due, gives notice by advertisement that he intends to apply to the county court on a certain day for a judgment to sell all delinquent realty; and that he will offer for sale, on a certain Monday, such lands as the court may order. This advertisement is published once, at least 10 days before the application for judgment, in a newspaper published in the township, or if no such paper is available, in one published in the county. 29/ Application for judgment is made to the county court as specified in the notice, although judgment may be obtained after that time if the court is not in session or circumstances prevent such action. 30/ The court issues its judgment on the basis of the "delinquent list" 31/ which is made up by the collector in a specified form. 32/ The "delinquent list" is a very important item in the collection procedure since the judgment of sale may be rendered invalid by errors in it, or by a failure to prepare it. 33/ This list also constitutes a part of the permanent "tax,

26/ Chambers v. The People, 113 Ill. 509 (1885).

27/ People ex rel. Ream v. Dragstran, 100 Ill. 286 (1881).

28/ People ex rel. Cox v. Freeman, 301 Ill. 562, 134 N.E. 121 (1922).

Although real property taxes in Illinois are a personal liability of landowners, that liability must be enforced in a suit brought for the specific purpose. The judgment obtained in such a suit is distinct from the judgment of sale under discussion at this point.

29/ Ch. 120, sec. 170, Ill. Rev. Stat. 1937.

30/ Ch. 120, sec. 173, Ill. Rev. Stat. 1937.

31/ Ch. 120, sec. 179, Ill. Rev. Stat. 1937.

32/ Ch. 120, sec. 176, Ill. Rev. Stat. 1937.

33/ People ex rel. Akin v. Curtis, 336 Ill. 248, 168 N.E. 263 (1929).

judgment, sale, redemption, and forfeiture record" of the collector, which records the steps taken in the collection of delinquent real property taxes. 34/ The taxes for which judgment of sale is rendered are not limited to those currently delinquent but include uncollected back taxes, 35/ and, if the land has been previously forfeited to the State, it includes back taxes, interest, costs, and printers' fees. 36/ Each judgment of sale thus expresses the total amount of unpaid taxes, costs, etc., charged against the land at that date. 37/

This is a blanket procedure, saving costs that would mount rapidly if each parcel had to be handled separately. It is at this point that the owner of the property may make his objections in court, to show wherein the taxes are in error. Objections are heard and determined in a summary manner. 38/ If the landowner does not object or if his objections are not allowed, the county court renders judgment in a given form. 39/ This judgment, required by the Constitution of Illinois, may be regarded as an important step in the collection procedure, since the validity of tax titles rests to a large degree upon its strength and weaknesses.

Cure of defects in tax procedure prior to judgment; by statutes, or by amendment of tax record

Certain defects are cured by virtue of express provisions of the statutes, and others may be cured by amending the tax record in the judgment proceeding before the county court. Two statutes, one a 1937 enactment, relate to this subject. 40/ The older law provides that the assessment of property and the tax levy shall be considered valid in all judicial proceedings for the collection of taxes, regardless of whether there have been irregularities in the tax lists or assessment rolls; whether they have been made up or returned to the proper officials within the time limits stated in the statutes; or whether the name of the owner is erroneous or not even stated. Other statutes have a similar curative import: one provides that failure to complete the assessment in time does not invalidate it; 41/ another provides that no assessment or charge for taxes shall be invalid because it was

34/ Ch. 120, secs. 176 and 182 to 186, Ill. Rev. Stat. 1937.

35/ Ch. 120, sec. 262, Ill. Rev. Stat. 1937.

36/ Ch. 120, sec. 117, Ill. Rev. Stat. 1937. For an explanation of the applications of secs. 117 and 262 of ch. 120, see *Neff v. Smyth*, 111 Ill. 100 (1884).

37/ This statement is not strictly true if the land has received a new owner. Ch. 120, sec. 263, Ill. Rev. Stat. 1937, prohibits the inclusion of part of the back taxes in the collector's application for judgment if the ownership has changed.

38/ Ch. 120, sec. 179, Ill. Rev. Stat. 1937.

39/ *Ibid.*

40/ Ch. 120, secs. 179 and 179a, Ill. Rev. Stat. 1937.

41/ Ch. 120, sec. 265, Ill. Rev. Stat. 1937.

not made or completed within the statutory time; 42/ another provides that failure to deliver the collector's books within the statutory time shall not invalidate the assessment or levy; 43/ and still another provides that charging the land in some name other than its rightful owner's shall not invalidate the tax sale. 44/

The 1937 law states that in all judicial proceedings for the levying and collection of taxes, no error or informality of an officer in making the levy or certifying or filing it shall invalidate it unless the error affects the substantial justice of the levy or increases its aggregate amount or rate. A general clause of the older statute is somewhat similar and provides that errors or informalities in the proceedings of any of the officers connected with the tax procedure will not render the tax invalid unless they affect its substantial justice.

What affects substantial justice has been left to court interpretation. Under the elder statute, the failure of an assessor to verify his assessment book by affidavit was held not to affect the substantial justice of the tax. 45/ The failure of a commissioner of highways to itemize the purposes of a road and bridge levy, as required by statute, was held to affect the substantial justice of the tax. 46/ The Illinois Supreme Court also limited the provision to apply only where there was an attempt to comply with the law, such attempt being ineffective because of some informality or clerical error. 47/ Whether a wider scope will be given the 1937 law remains to be seen. Another portion of the older statute permits the county court to make amendments to the tax record. The Illinois Supreme Court has interpreted this to permit only amendments in conformity with what actually occurred, and has held that it is improper for the lower court to permit an amendment stating that something occurred which in fact did not occur. The court has also held it improper to permit an amendment unless the evidence clearly shows that the record fails to state the truth. 48/

The 1937 law was no doubt devised in part to meet these interpretations and to expand the scope of amendments that could be made in

42/ Ch. 120, sec. 266, Ill. Rev. Stat. 1937.

43/ Ch. 120, sec. 267, Ill. Rev. Stat. 1937.

44/ Ch. 120, sec. 268, Ill. Rev. Stat. 1937.

45/ People v. Kimmel, 323 Ill. 261, 154 N.E. 97 (1926).

46/ See People ex rel. Andrew v. C.M. & St. P. R.R. Co., 324 Ill. 43, 45, 154 N.E. 472, 473 (1926).

47/ People ex rel. Anderson v. N.Y. Cent. R.R. Co., 314 Ill. 429, 145 N.E. 593 (1924); approved in People ex rel. Wangelin v. City of St. Louis, 367 Ill. 57, 10 N.E. (2d) 369 (1937).

48/ People ex rel. Pummill v. N.Y.C. & St. L. R.R. Co., 324 Ill. 510, 155 N.E. 358 (1927), refusing to permit an amendment stating that the board of education had levied a school tax at a meeting other than at that shown by their records; People ex rel. Olmsted v. The Wabash Ry. Co., 316 Ill. 403, 147 N.E. 455 (1925), permitting the date of a certificate of levy to be amended.

the county court proceedings. It also authorizes amendments to cure errors or informalities in the levy, its certification, filing, publication, itemization, or purpose, where they do not affect the substantial justice of the levy or increase its aggregate amount or rate. Although the precise extent of this new power of amendment must be decided by the courts, it is seen that the county court possesses a valuable power to cure pre-existing defects in the tax procedure.

Effect of the judgment of sale

The effect of a judgment of sale upon tax titles may be measured by its weaknesses, or the grounds upon which it may be attacked, since one of its important functions is to cure irregularities and minor defects that have previously occurred in the tax procedure. To the extent that the judgment does this, it provides a sound basis for the sale of the land. ^{49/} The grounds upon which the judgment may be attacked depend upon the nature of the attack, that is, whether it is direct or collateral. Collateral attacks are more important as regards validity of tax titles, although they may be made upon fewer grounds than direct attacks. The following discussion attempts to set out some of the points wherein the judgment is strong or weak.

Distinction between direct and collateral attacks on the judgment

In general, a direct attack is made by a court action the purpose of which is to have the judgment declared void ab initio. ^{50/} A common example of a direct attack is an appeal to the Supreme Court from the judgment of sale of the county court. A collateral attack, generally speaking, is made when the court action, in which the validity of the judgment is questioned, was not commenced for the express purpose of having the judgment declared void ab initio. A common example is an attack on the validity of a judgment of sale by the former landowner when the holder of a tax deed brings an action against him to obtain possession of the land. The purpose of the action is to obtain possession, not to attack the judgment, and hence the attack is collateral.

Appeals from the judgment of sale

Either the taxpayer or the State may conduct a direct attack upon the judgment through an appeal from the county court ^{51/} within 30 days of the date of judgment. On appeal, the taxpayer may attack the judgment on any ground that he raised before the county court. ^{52/}

^{49/} From the viewpoint of the taxpayer, the judgment proceedings also afford him a hearing as to the validity of the tax. For a legal discussion questioning the protection given the taxpayer in Illinois, see Carey and Schuyler, "The Illinois Taxpayer's Day in Court," 31 Ill. L.R. 993 (1937).

^{50/} From the beginning.

^{51/} Ch. 120, sec. 180, Ill. Rev. Stat. 1937, specifically refers only to appeals by the taxpayer. With respect to the power of the State to appeal see Hayward v. Sencenbaugh, 235 Ill. 580, 35 N.E. 939 (1908); and People ex rel. Mercer v. Wyand Light Co., 306 Ill. 377, 137 N.E. 834 (1923).

^{52/} People ex rel. Bear v. Ill. Cent. R.R. Co., 267 Ill. 469, 108 N.E. 706 (1915).

The statute also provides, in effect, that no appeal shall prevent the sale of the land in accordance with the judgment unless the taxpayer first deposits the amount of the judgment and costs with the county collector. 53/ If the judgment is reversed, he recovers the sum deposited. Appeals do not affect rural tax titles to any great extent, however, since their cost often exceeds the amount of the tax involved. Further, anyone taking the trouble to appeal would probably make the required deposit with the collector and thus prevent the sale of the land or the creation of a tax title until after the disposal of the appeal.

Collateral attack on the ground that court had no jurisdiction to render judgment

An important ground upon which the judgment may be attacked collaterally is that the court had no jurisdiction to render it. Jurisdiction is obtained by the making and filing of the "delinquent list," and the publication of notice of application for judgment by the county collector 54/ as described above. Unless the form of the notice and the manner of publishing it conform strictly to the statute relating thereto, no jurisdiction is obtained and the judgment is void. 55/ Thus, no jurisdiction is obtained if the notice fails to state that judgment will be sought against the delinquent list, 56/ or if the collector knows the name of the owner of the property but does not place it in the notice or makes a material error in stating it, 57/ or if the description of the land stated in the notice materially differs from that given in the delinquent list. 58/ If the taxpayer does not appear in the county court to object to the collector's application for judgment, all of these defects and any others that go to the jurisdiction of the court may subsequently form the basis of a collateral attack upon the judgment or a tax title depending on the judgment.

Waiver of jurisdictional defects by appearing in county court and contesting collector's application for judgment

If the landowner appears in the county court and contests the collector's application on the merits, he waives the jurisdictional

53/ Ch. 120, sec. 181, Ill. Rev. Stat. 1937, is apparently in conflict with sec. 180 since it directs the county collector not to sell the land until the appeal is disposed of, regardless of whether a deposit has been made.

54/ People ex rel. Ream v. Dragstran, 100 Ill. 286 (1881).

55/ See People ex rel. Thaxton v. Coal Belt Elec. Ry. Co., 311 Ill. 29, 33, 142 N.E. 495, 497 (1924).

56/ Gage v. People, 188 Ill. 92, 58 N.E. 947 (1900).

57/ Gage v. People, 205 Ill. 547, 69 N.E. 80 (1903); People ex rel. Brockamp v. Smith, 266 Ill. 344, 107 N.E. 615 (1915), discusses proof of knowledge in the collector; McChesney v. People, 178 Ill. 542, 53 N.E. 356 (1899). Quaero: Would the decisions in these cases have been otherwise if the court had considered ch. 120, sec. 268, Ill. Rev. Stat. 1937, which states that a sale shall not be invalid because the land was not charged in the name of the owner?

58/ Smythe v. People, 219 Ill. 76, 76 N.E. 82 (1905).

defects described above, 59/ and the judgment cannot subsequently be attacked on those grounds. 60/ This rule has one exception, however. When the jurisdictional defect is that the description (in the notice and delinquent list) is so defective that a surveyor could not locate the land by it, even the appearance of the landowner does not waive the defect. 61/ Such a defect may be cured by amendment in the court proceeding if, and only if, the landowner has appeared and contested the collector's application on its merits. 62/ These rules with respect to waiver of jurisdictional defects by appearance illustrate the complexity of matters that affect the grounds upon which a tax title may be attacked.

Attacks upon form of judgment

The judgment may be attacked either directly or collaterally upon the basis of its form if it does not substantially conform to the provisions of the statute. 63/ It must state the sum of the delinquent taxes for which the land is sold, 64/ and must describe the land. 65/ This is usually done by reference to the "delinquent list" instead of stating these matters anew. Thus, errors in the "delinquent list" may provide a basis upon which to attack the judgment. If the judgment is thus insufficient, it is invalid; and a tax deed issued thereon is also invalid 66/ and may be successfully attacked.

Statutory grounds upon which judgment may be collaterally attacked

The revenue act of 1879 amended what is now ch. 120, sec. 210, Ill. Rev. Stat. 1937, by adding the following language, which still remains in the statute:

"And any judgment for the sale of real estate for delinquent taxes rendered after the passage of this Act, except as otherwise provided by this section, shall estop

59/ People ex rel. Akin v. Southern Gem Co., 332 Ill. 370, 163 N.E. 825 (1928).

60/ If the landowner contests the collector's application for judgment upon the sole ground that no jurisdiction has been obtained by the court, he does not waive jurisdictional defects; see Nicholes v. People, 165 Ill. 502, 46 N.E. 237 (1897), and he may later take advantage of them if the court erroneously decided it had jurisdiction and rendered judgment ordering the land to be sold. Such court errors are infrequent, however, and their usual result is merely that the notice of application for judgment must be published again, with the defect corrected, before the county court will give judgment.

61/ People ex rel. Ream v. Dragstran, 100 Ill. 286 (1881).

62/ Nicholes v. People, 165 Ill. 502, 46 N.E. 237 (1897). But if the landowner appears for the sole purpose of contesting the jurisdiction, the defect cannot be cured by amending the notice, and the notice must be published again in its correct form before the county court will give judgment.

63/ Ch. 120, sec. 179, Ill. Rev. Stat. 1937, states the provisions.

64/ People ex rel. McKnight v. Chicago Title and Trust Co., 266 Ill. 224, 107 N.E. 198 (1914).

all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment or decree, and could have been presented as a defense to the application for such judgment in the court where the same was rendered, and as to all such questions, the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax or special assessments have been paid, or the real estate was not liable to the tax or assessment:" (*Italics added.*)

The interpretation of the above language as it permits or bars collateral attacks upon the judgment of sale is vital to the status of tax titles in Illinois.

What does "conclusive evidence" mean? As used here it means that when the judgment is introduced in evidence in a collateral proceeding, the statements made in the judgment as to matters affecting its validity must be accepted by the court as being true and cannot be questioned even though as a matter of fact they are not true. The statute expressly states only two grounds upon which the judgment is not conclusive evidence in collateral proceedings and may hence be attacked: that the tax was paid, and that the real estate was not liable to the tax. Despite the statute, the judgment may be attacked upon another ground -- that the court had no jurisdiction to render it. 67/ The scope of the first stated ground of attack -- that the tax was paid -- is clear; but the second has been interpreted to include an item that is not ordinarily thought to affect the legality of a tax. Before 1879, when the above statute was enacted, the courts held that if the judgment was for only a few cents more than was actually due at the date of judgment, it was void and could be collaterally attacked; provided the landowner had not appeared and contested the collector's application for judgment. 68/ After the enactment of the statute and despite its obvious intent to change this rule, the Illinois Supreme Court interpreted it to mean that if the judgment was too large, the excess was a tax for which the land was not liable, and that the entire judgment was thus invalid. The net result is that the old rule is still in effect. 69/

65/ People ex rel. Naylor v. Smith, 281 Ill. 538, 118 N.E. 61 (1917).

66/ Wilson v. Glos, 266 Ill. 392, 107 N.E. 630 (1915).

67/ See People v. Miller, 339 Ill. 573, 578, 171 N.E. 672, 675 (1930).

68/ McLaughlin v. Thompson, 55 Ill. 249 (1870); Gage v. Lyons, 138 Ill. 590, 28 N.E. 832 (1891). Cf. Chambers v. People, 113 Ill. 509 (1885) holding that if judgment, even though it includes illegal items, is less than it could legally have been, it is valid.

69/ See discussion in People v. Miller, 339 Ill. 573, 586 et seq., 171 N.E. 672, 678 (1930). Gage v. Goudy, 141 Ill. 215, 30 N.E. 320 (1892).

The judgment is one of the most important steps in the tax collection procedure in Illinois. The hearing before judgment provides a means of recognizing defects in the procedure up to that point, and a method for curing some of them. The taxpayer may here complain of errors that have been made, and if his complaint is well founded, he may prevent the court from giving judgment against him until the proper steps have been taken to correct the mistakes. Further, the validity of tax deeds depends upon the strength of the judgment of sale. This fact necessarily affects the number of purchasers at tax sales and their eagerness to buy. The judgment, however, is only one of the steps in the tax procedure. The tax sale is also important.

Sale of Land for Delinquent Taxes

Delinquent taxes for which land is sold

The judgment is for all delinquent taxes, regardless of the year for which they were levied, as was pointed out above. 70/ Some of the land may be delinquent for the first time; some may have been chronically delinquent for many years and may be offered for an amount greater than its sale value; other lands may have been purchased at previous sales and allowed to go delinquent again; and occasionally land will be offered for sale under an earlier judgment, if for some reason it was not executed. 71/

Preparation for sale

At least 5 days before the sale, the county collector must mail a notice to the landowner, if known, otherwise to the person who paid the taxes the preceding year, notifying him of the application for judgment, the date of the sale, the description of the land, and the amount of taxes, interest, and costs that may be due. If the land has been forfeited to the State for 2 years in succession, however, the notice need not be sent. 72/ No Illinois court decision upon the effect of failure to give such notice has been found. As the notice is merely one of the sale, and in view of the decision in Morgan v. Camp, 73/ holding a sale void for want of proper notice, failure to conform to the statute in this respect might be construed to invalidate the sale but not the judgment. A defective sale, however, would render void a tax deed based on that sale.

Just before the sale, and on the same day, the delinquent list is examined by the clerk and the collector, bringing up to date all payments. Upon this record the clerk issues a certificate under seal

70/ See ch. 120; secs. 117, 214, 261, 262, 263, Ill. Rev. Stat. 1937, and court decisions interpreting them, for details of interest, penalties, costs, and effect of change in ownership.

71/ See ch. 120, sec. 170(a), Ill. Rev. Stat. 1937.

72/ Ch. 120, sec. 174, Ill. Rev. Stat. 1937. (A 1937 amendment struck out a provision that the notice should be sent by registered mail.)

73/ 16 Ill. 175 (1854).

of his office, that it is a true and correct account. 74/ If the certificate is not made, the sale will be void. 75/

Conduct of the tax sale

After these formalities have been complied with, the county collector 76/ is ready to proceed with the real business of selling the lands. Tracts must be separately offered in consecutive order at the court house, between the hours of 9 and 4, the sale continuing from day to day as long as there are any tracts left to sell. 77/ A sale made on a day different from that prescribed or to which the sale is continued, renders it invalid and provides a ground upon which a tax deed based thereon may be attacked. 78/ If by any chance a piece of land is not offered at the regular sale, that is, if the judgment remains unexecuted, it may be sold any time during the year after proper advertisement. 79/ The collector offers all lands to the bidder who will accept the lowest percentage of the amount due as a penalty. 80/ The statute fixes the maximum rate at 12 percent, and bids are rarely less than that amount in practice. If anyone purchases, he is issued a certificate of purchase, countersigned by the collector. The certificate is assignable and may incorporate more than one tract if the tracts are all owned by the same person. 81/ If for any tract offered for sale by the collector no purchaser appears it is forfeited to the State. 82/

Purchasers at the tax sale

Counties, cities, towns, and school districts are permitted to purchase at tax sales in the same manner as individuals, subject to the limitation that they may purchase only land that has been forfeited at least once. 83/ Although the ordinary purchaser may eventually obtain a tax deed which, if valid, will give him a title free from existing mortgages or other encumbrances against the land, the courts hold that persons whose duty it is to pay the tax, such as a landowner or a tenant in common, cannot let taxes remain unpaid, then purchase at tax sale and obtain a title that will freeze out mortgagees, other tenants in common, etc. 84/

74/ Ch. 120, sec. 182, Ill. Rev. Stat. 1937; *Kepley v. Fouke*, 187 Ill. 162, 58 N.E. 303 (1900).

75/ *Glos v. Randolph*, 138 Ill. 268, 27 N.E. 941 (1891).

76/ Ch. 120, sec. 182, Ill. Rev. Stat. 1937.

77/ Ch. 120, sec. 187, Ill. Rev. Stat. 1937.

78/ *Hope v. Sawyer*, 14 Ill. 254 (1852).

79/ Ch. 120, sec. 170(a), Ill. Rev. Stat. 1937.

80/ Ch. 120, sec. 188, Ill. Rev. Stat. 1937. A penalty is a flat percentage of the amount due and is not interest.

81/ Ch. 120, sec. 193, Ill. Rev. Stat. 1937.

82/ Ch. 120, sec. 189, Ill. Rev. Stat. 1937. (The meaning and effect of forfeiture is discussed below.)

83/ Ch. 120, sec. 214, Ill. Rev. Stat. 1937.

84/ *Higgins v. Crosby*, 40 Ill. 260 (1866).

Nature of purchaser's interest in the land

The tax purchaser does not acquire the land at the sale, nor does he obtain even a lien against it. The lien for taxes created by ch. 120, sec. 238, Ill. Rev. Stat. 1937, exists only in favor of the State and is terminated when the tax is paid by the purchaser at the sale. ^{85/} Even though the purchaser obtains no lien, he is protected from losing his expenditures by a statutory provision which makes it the duty of any court declaring a tax deed invalid or setting it aside, to require that the holder of the invalid tax deed be reimbursed. ^{86/} This provision protects the expenditures of the tax purchaser in much the same way as if he held a lien. Apparently, then, the purchaser at a tax sale obtains only a right to redemption payments or to a tax deed if the land is not redeemed, and a right to reimbursement of expenditures if such deed is set aside or held invalid through court action.

Effect of forfeitures on nature of State's interest in the land

Forfeiture does not transfer the title of forfeited land to the State, ^{87/} nor does it create a lien in the State. The lien of the

^{85/} O'Connell v. Sanford, 256 Ill. 62, 99 N.E. 885 (1912). For statutes under which individuals may possess liens for taxes see ch. 120, sec. 192; and ch. 24, sec. 808.15, Ill. Rev. Stat. 1937.

^{86/} Ch. 120, sec. 210, Ill. Rev. Stat. 1937. The statute also sets out the items of expense and interest that are repaid to the purchaser. For decisions applying it, see Chicago v. Collin, 302 Ill. 270, 134 N.E. 751 (1922); and Graham v. O'Connor, 350 Ill. 36, 182 N.E. 764 (1932).

^{87/} Although no Illinois court decision so holding has been found, there is no statute providing that the State takes title by forfeiture. In view of the statement in Cooley, Taxation (4th ed.), sec. 1350 that, "It is conceded on all sides that an intent to transfer title to the government by forfeiture will not be inferred in any case from language capable of any milder construction," this fact would seem sufficient of itself. Additional indications that the State obtains no title by forfeiture are: that ch. 120, sec. 238, Ill. Rev. Stat. 1937, states that after 2 forfeitures the State may foreclose its "lien" in equity; and that the land is taxed after forfeiture, although State-owned lands are exempt from taxation by ch. 120, sec. 2.

Ch. 120, sec. 215, Ill. Rev. Stat. 1937, provides that a personal action of debt may be brought against the taxpayer for delinquent taxes. If judgment is obtained, execution may be levied against any of the taxpayer's property. If it is levied against the land the State may obtain title to it through purchase at the execution sale. Ch. 120, sec. 238 provides for a foreclosure by the State of its tax lien on forfeited property. If the State should purchase at this foreclosure sale, it could obtain title to the property. Neither of these proceedings, however, can be said to give the State title by reason of forfeiture, except by very indirect methods. The proceedings are discussed under "Supplementary Tax Collection Procedures."

State is created more than a year prior to forfeiture, 88/ and continues unaffected by it. 89/ Thus "forfeiture" does not increase the interest of the State in the land in any way, and as a practical matter means only that land has been offered at tax sale and that no bidders have appeared to purchase it. 90/ As the statutes provide no means of converting a forfeiture into a title, land may for many years exist in an ambiguous state, paying no taxes, yet remaining subject to the disposal and the use or abuse of its legal owner, the delinquent taxpayer.

Despite this fact, it may be important that forfeiture has occurred. Counties, municipalities, etc. may purchase at a tax sale only land that has been previously forfeited to the State. 91/ Further, when land has been twice forfeited, the State may foreclose its tax lien against it. 92/ Special rules of redemption, moreover, apply to forfeited lands; 93/ and whenever the county judge, county clerk, and county treasurer choose to certify that the taxes exceed the actual value of the land, it may be sold to the highest bidder at a public sale. When land is so sold, however, the purchaser obtains only a certificate of purchase. 94/

Redemption of Lands

Redemption or purchase of lands forfeited to the State

The purpose of the statute relating to this subject 95/ seems to be the provision of a means whereby the landowner can redeem from the forfeiture, and a method whereby individuals may purchase land after the annual tax sales have been held. It is provided that redemption or purchase shall be for the "amount due." Although what constitutes the "amount due" is not clearly stated, it seems to include the taxes, statutory costs, interest, printer's fees, and a flat 12 percent of all taxes forfeited, for each forfeiture. 96/ The consti-

88/ Ch. 120, sec. 238, Ill. Rev. Stat. 1937, and page 8.

89/ See Chicago v. Collin, 302 Ill. 270, 274, 134 N.E. 751, 753 (1922).

90/ See ch. 120, sec. 189, Ill. Rev. Stat. 1937, providing that lands not sold for want of bidders shall be "forfeited" to the State of Illinois.

91/ Page 19.

92/ Ch. 120, sec. 238, Ill. Rev. Stat. 1937. Described on p. 32.

93/ Ch. 120, sec. 212, Ill. Rev. Stat. 1937. Described on p. 21.

94/ Ch. 120, sec. 189, Ill. Rev. Stat. 1937. The effects of this certificate of purchase are not clear. Can the landowner redeem for the usual penalties, etc., based on the amount the land sold for? Byrne v. The Town of LaSalle, 123 Ill. 581, 14 N.E. 679 (1888), seems to indicate that he can, although the facts of the case are not clear in this respect. The decision does hold that the landowner cannot escape personal liability for the taxes if he requests that the certificate of the county judge, etc., be issued, but does not indicate what the holding would be if the county officials issued the certificate on their own motivation, and then brought a personal action to collect the deficiency under ch. 120,

tutionality of the purchase provisions of the statute have been upheld by the Illinois Supreme Court. 97/ In its decision the court stated that the certificate of purchase issued to the purchaser under this statute passes the same rights as does a similar certificate issued at the regular tax sale. That is, the purchaser must hold the land during a two-year redemption period before he can obtain a tax deed, etc.

The important point relating to the redemption of forfeited lands is that there is no definite limit to the redemption period, and unless the State begins an action to foreclose its lien, succeeds in selling the land at a subsequent sale, or decides that the delinquent taxes exceed the value of the land, the redemption period is actually without end. Some of the effects of this state of affairs are pointed out in a later section.

Redemption of land sold to a tax purchaser

When land has been sold to a tax purchaser, the owner has a certain length of time in which to redeem it. This time cannot be less than 2 years from the date of sale, by virtue of a constitutional provision, 98/ and may extend much longer, if the purchaser is lax and does not evade the pitfalls set for him by the statutes. 99/ At all events, the landowner is entitled to advance personal notice of the expiration of the redemption period under the Illinois Constitution, 100/ and need not redeem until he receives such notice. Special privileges of redemption are granted minors, idiots and insane persons, 101/ and they, or persons on their behalf, may redeem the land at any time within a year following the removal of their disabilities. No announcement of disabilities is made at tax sales, and the prospective purchaser must investigate them himself or take his chances.

When the landowner wishes to redeem, he must pay all taxes and special assessments which have accrued since the sale, plus 7 percent interest; 102/ he must repay the purchaser the cost of recording his

sec. 215, Ill. Rev. Stat. 1937. Since sec. 215 refers to a suit for the "whole amount due for taxes" etc., it may not permit one for a part of the taxes.

95/ Ch. 120, sec. 212, Ill. Rev. Stat. 1937, is the comprehensive statute relating to this subject.

96/ No court decision deciding the amount to be paid has been found.

97/ Zicarelli v. Stuckart, 277 Ill. 26, 115 N. E. 192 (1917).

98/ Art. IX, sec. 5, Illinois Constitution.

99/ Described in connection with "Tax Deeds"

100/ Art. IX, sec. 5.

101/ Ch. 120, sec. 196, Ill. Rev. Stat. 1937.

102/ All taxes and assessments following the sale have usually been paid by the purchaser in the meantime. See ch. 120, sec. 197, Ill. Rev. Stat. 1937.

certificate of purchase; and he must pay the amount the land sold for plus penalties that increase progressively according to the time elapsed between the sale and the redemption. Penalties are as follows: during the first 6 months, the penalty bid; during the second 6 months, twice the penalty bid; during the third 6 months, three times the penalty bid; during the fourth 6 months, four times the penalty bid; after the fourth 6 months, which would normally be the end of the 2-year redemption period, four times the penalty bid plus 6 percent interest on the amount of the sale calculated from the end of the 2-year period. 103/ Payment is made to the county clerk. The claim of the purchaser is released when he receives the redemption money 104/ paid to the county clerk. Apparently there is nothing to prevent the landowner from dealing directly with the purchaser, buying the latter's certificate of purchase and offering it to the clerk for cancellation if he wishes.

Tax Deeds

How purchaser obtains a tax deed

If the purchaser at a tax sale is to obtain a tax deed, he must conform to the statutes and carry out their requirements.

Payment of taxes by the purchaser during the redemption period. The statutes have been interpreted as requiring the purchaser to pay all taxes and special assessments falling due during the redemption period, and to make such payments before the land has been either sold or forfeited. 105/ If the land is sold or forfeited the redemption period is extended another 2 years from that time. 106/ If the purchaser fails to pay the taxes and the land is sold to another purchaser, the redemption period is not only extended, but the latter receives all the redemption penalties and interest, leaving the former only the right to receive the amount he paid out, or to redeem from the second purchaser in the usual way. 107/

Notice of expiration of the redemption period. Article IX, section 5, of the Illinois Constitution states that the General Assembly

103/ Ch. 120, sec. 196, Ill. Rev. Stat. 1937, is the comprehensive redemption statute. It should be remembered that the penalty bid is not interest but a flat charge.

104/ Ch. 120, sec. 201, Ill. Rev. Stat. 1937.

105/ Ch. 120, sec. 197, Ill. Rev. Stat. 1937; and Lawton v. Sweitzer, 354 Ill. 620, 188 N.E. 811 (1934).

106/ As the statute is interpreted by People v. Banks, 294 Ill. 464, 128 N.E. 576 (1920); and Metterstrom v. Kemeys, 187 Ill. 617, 58 N.E. 609 (1900).

107/ Ch. 120, sec. 197, Ill. Rev. Stat. 1937. It might be noted that an exception is made if municipal corporations bid in their own delinquent special assessments in default of other bidders, and they are not required to pay taxes and assessments during the redemption period.

shall provide for notice of expiration of the redemption period to be given interested parties: "Provided, that occupants shall in all cases be served with personal notice before the time of redemption expires." (Italics added.) The General Assembly has made a detailed provision for this notice. 108/ Notice shall be personally served (1) on every person in actual possession or occupancy, (2) on the person in whose name the property was taxed, if he can be found within the county, and (3) on the owners or parties interested in the land, including (a) mortgagees or (b) trustees of record, if they can be found within the county. This notice may be written or printed or both, and service must be made at least 3 months before the redemption period expires. In the event such persons cannot be found, unless the land occupant is their tenant, notice may be given by publication in a newspaper three times, the first not more than 5 months and the second not less than 3 months before the end of the redemption period.

Contained in the notice, whether served or published, must be the following particulars about the property: (1) date of purchase, (2) in whose name taxed, (3) description of property, (4) for what year taxed or specially assessed, and (5) the date of expiration of redemption. Failure to state any one of these items or a misstatement of any one of them renders the subsequent tax deed void. 109/ Through interpretation of the statutes by the courts, moreover, it is necessary to state whether the delinquency was for taxes or special assessments. 110/ Where several of his certificates apply to property owned by one party, the purchaser may incorporate them in one notice.

The statutory provisions relating to the service of the notice must also be strictly followed. Failure to conform to their requirements renders the subsequent tax deed void. Thus, where "personal service" is required, the legal rules defining "personal service" must be complied with. 111/ If there is an occupant on even part of the premises, he must be served. 112/ The occupant, however, must not be placed there by the party required to serve the notice. 113/ That the

108/ Ch. 120, sec. 202, Ill. Rev. Stat. 1937.

109/ Wisner v. Chamberlin, 117 Ill. 568, 7 N.E. 68 (1886), misstating redemption date; Esker v. Hefferman, 159 Ill. 38, 41 N.E. 1113 (1895), land improperly described; Brophy v. Harding, 137 Ill. 621, 27 N.E. 523 (1891), misstating the date of expiration of redemption period; Taylor v. Wright, 121 Ill. 455, 13 N.E. 529 (1887), failure to state year or to whom taxed; Gage v. Davis, 129 Ill. 236, 21 N.E. 783 (1889), misstating redemption date; the day fell on Sunday so Monday was the true day.

110/ Harrell v. Enterprise Savings Bank, 183 Ill. 538, 56 N.E. 63 (1899).

111/ For examples of some of these rules, see Gage v. Hervey, 111 Ill. 305 (1884), serving one of two parties in whose names land was taxed is not service on the other; Gage v. Lyons, 138 Ill. 590, 28 N.E. 832 (1891), service on wife of occupant held insufficient.

112/ Smith v. Gage, 12 Fed. 32 (1882).

113/ Burton v. Perry, 146 Ill. 71, 34 N.E. 60 (1893).

person in whose name the property is taxed must be served with the notice, even if the party desiring a tax deed knows that he has no "interest" in the property, 114/ exemplifies the strictness with which the statute must be followed.

Affidavit that notice has been given. After complying with the foregoing requirements, the purchaser may proceed to obtain his tax deed unless the owner has redeemed within the allowed time. After giving notice of expiration of the redemption period, the purchaser is required to make an affidavit to that effect. Such affidavit must be deposited for record with the county clerk 115/ and must affirmatively state the facts relied upon as showing that the statutory notice was given. Failure to state sufficient facts or to file such an affidavit renders the subsequent tax deed void. 116/

Time limit for obtaining and filing the tax deed, and its form. At any time after the expiration of 2 years from the date of sale, 117/ and within 1 year from the expiration of the period of redemption, 118/ the purchaser may obtain a tax deed from the county clerk. 119/ Several certificates may be incorporated in one deed if the property is all owned by the same party. 120/ The deed must not only be obtained within this period of one year, but it must be filed for record within the same period 121/ and will be void if it is not so obtained and filed. 122/ The form of the tax deed must substantially conform to that given in the statutes. 123/ An error in the description of the land conveyed by the deed will render it void. 124/ The county clerk is required to record as evidence the collector's application for judgment, affidavits, notices, certificates of sale, and other documents upon which the deed is issued. 125/

Effect of tax deed in general. If the maze of statutory requirements enumerated in the preceding discussion has been faithfully

114/ Barnard v. Hoyt, 63 Ill. 341 (1872).

115/ Ch. 120, sec. 203, Ill. Rev. Stat. 1937.

116/ Wallahan v. Ingersoll, 117 Ill. 123, 7 N.E. 519 (1886).

117/ Ch. 120, sec. 205, Ill. Rev. Stat. 1937.

118/ Ch. 120, sec. 211, Ill. Rev. Stat. 1937.

119/ Ch. 120, sec. 207, Ill. Rev. Stat. 1937, provides for the form of the deed.

120/ Ch. 120, sec. 206, Ill. Rev. Stat. 1937.

121/ Ch. 120, sec. 211, Ill. Rev. Stat. 1937.

122/ People v. Banks, 294 Ill. 464, 128 N.E. 576 (1920).

123/ Ch. 120, sec. 207, Ill. Rev. Stat. 1937. Another statute, ch. 120, sec. 414, requires that all tax deeds shall state the full names and the true post office address and residence of the grantor and grantee. No decision interpreting this statute or reconciling its provisions with the statutory form of tax deed which does not contain such requirements has been found.

124/ Brickey v. English, 129 Ill. 646, 22 N.E. 854 (1889).

125/ Ch. 120, sec. 203, Ill. Rev. Stat. 1937.

followed, 126/ the whole legal and equitable estate is vested in the purchaser and a new and perfect title in fee simple is established as of the date of the tax deed. 127/ As a practical matter, the requirements are so many and intricate, and there are so many places where slight mistakes are fatal, that all tax deeds must be viewed with suspicion.

Reconveyance statute and action to obtain possession of the land

Reconveyance statute. Even though the party finally receiving a tax deed has complied with all requirements as to notice of expiration of redemption, preparing and filing the affidavit, etc., he has other requirements to meet or the former owner may yet effect a quasi-redemption and force a reconveyance of the land to him. The statute 128/ provides that the former landowner may force the tax deed holder to reconvey to him if such holder does not pay all taxes and special assessments legally assessed "for seven consecutive years," 129/ or if the tax deed holder or someone claiming under such deed does not take possession of the land or institute proceedings to take possession within one year of the date of the tax deed. 130/ As a further condition of reconveyance, the former owner must tender the tax deed holder the amount paid at the tax sale, plus 7 percent interest, subsequent taxes and special assessments paid by the tax deed holder, and statutory fees and costs incurred. Note that interest is paid only on the original sale price, and that no penalties are exacted of the former owner. The tax deed holder who is forced to reconvey receives very little recompense.

Action for possession. What constitutes "possession" as used in the statute outlined above is probably defined by the ordinary legal usage of the term. In general, "to constitute possession there must be such appropriation of the land to the individual as will apprise the community in its vicinity that the land is in the exclusive use and enjoyment of such person . . . The acts that will be sufficient to prove possession depend to some extent upon the nature and locality of the property, the use to which it is adapted, and the situation of

126/ That is, if there is a valid judgment, a valid sale, a proper notice and affidavit of redemption, and a valid tax deed.

127/ *Atkins v. Hinman*, 7 Ill. 437 (1845); *Woitynek v. Franken*, 300 Ill. 418, 133 N.E. 235 (1922).

128/ Ch. 120, sec. 411, Ill. Rev. Stat. 1937. Held not unconstitutional in *Elmhurst State Bank v. Stone*, 346 Ill. 157, 178 N.E. 362 (1932); *Prager v. Glos*, 348 Ill. 416, 181 N.E. 310 (1932).

129/ Such payments must be made before the land is sold for taxes or forfeited to the State. Quaere: Do the 7 years run from the date of the tax deed or from the tax sale? The statute is not explicit. See *Lawton v. Sweitzer*, 354 Ill. 620, 625, 188 N.E. 811, 813 (1934).

130/ If the tax deed holder or someone claiming under the deed institutes such proceedings or takes possession after the one year limit, but before the former owner tenders the reconveyance money, the reconveyance need not be made according to dicta in *Layman v. Langlois*, 274 Ill. 559, 561, 113 N.E. 927, 928 (1916).

the parties." 131/ As an example, it has been held that placing a fence around unoccupied property may constitute an act of possession. 132/

If the property is occupied and the tax deed holder is required to institute a court action to obtain possession, the validity of his tax deed is in effect tried by the court, since his recovery must be on the strength of his title and not on the weakness of the defendant's. 133/ Although at common law the tax deed holder would be required to prove that "all of the material requisitions of the statute have been complied with," 134/ present statutes make the tax deed prima facie evidence;

"First - That the real estate conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law.

"Second - That the taxes or special assessments were not paid at any time before sale.

"Third - That the real estate conveyed had not been redeemed from the sale at the date of the deed.

"Fourth - That the real estate was advertised for sale in the manner and for the length of time required by law.

"Fifth - That the real estate was sold for taxes or special assessments as stated in the deed.

"Sixth - That the grantee in the deed was the purchaser or assignee of the purchaser.

"Seventh - That the sale was conducted in the manner required by law." 135/

These provisions are of great aid to the holder of the tax title, for proof of the matters may be difficult even when all proceedings have been regular. When the deed is introduced in evidence, the seven matters stated above are presumed by the court to be true unless the defendant introduces evidence to overcome such presumption. If the defendant does produce sufficient evidence to overcome the presumption, then the plaintiff tax title holder must affirmatively prove the point. If the defendant does not produce sufficient evidence to overcome the presumption, the tax title holder need not submit any additional proof, and the deed alone is sufficient. 136/

The scope of the above statute providing that a tax deed shall be prima facie evidence of certain facts is limited to those enumerated

131/ Quoted from Towle v. Quante, 246 Ill. 568, 574, 92 N.E. 967, 969 (1910).

132/ Plenderleith v. Glos, 329 Ill. 382, 160 N.E. 745 (1923).

133/ McCauley v. Mahon, 174 Ill. 384, 51 N.E. 829 (1898).

134/ Quoted from Graves v. Bruen, 11 Ill. 431, 437 (1849).

135/ Ch. 120, sec. 210, Ill. Rev. Stat. 1937.

136/ As an example, see Tibbetts v. Job, 11 Ill. 453 (1849).

facts only. 137/ All other matters material to the tax title must be affirmatively proved by the plaintiff. He must prove that he complied with the requirements for giving notice of redemption, 138/ and filing an affidavit 139/ to that effect; 140/ and he must prove the existence of both a valid judgment of sale 141/ and a valid precept of sale. 142/ The difficulties of making these proofs many years after the events have occurred are apparent. In an action by the holder of the tax deed to obtain possession of the lands, the defendant may, of course, defend upon the ground that the tax deed is void for any of the numerous reasons pointed out in the description of the judgment of sale, the tax sale and the redemption procedure. Any defense attacking the judgment in this kind of action is necessarily collateral.

Statutes of limitation as affecting tax titles

In the event that the holder of a tax title obtains possession of the realty without the necessity of court action, and continues to pay all taxes and special assessments for "seven consecutive years" so that the land does not become subject to reconveyance to the former owner under the statute described above, what kind of a title does he have? If it has any defects, the statutes of limitation may act to cure them. Such statutes restrict the time within which certain actions may be commenced and thus act to the benefit of the defective tax title holder.

The general 20-year statute of limitations. A general statute prohibits any action "for the recovery of lands" unless commenced within 20 years after the right to bring such an action accrues. 143/ The right would accrue to the landowner when the holder of the tax title (assuming it was invalid, otherwise it could not be successfully attacked) entered into possession of the lands. 144/ The bar of this statute is not absolute, however, since another statute 145/ provides that if such right first accrues to a person who is a minor, insane, imprisoned, "or absent from the United States in the service of the

137/ Kepley v. Fouke, 187 Ill. 162, 58 N.E. 303 (1900).

138/ Ch. 120; sec. 202; Ill. Rev. Stat. 1937.

139/ Ch. 120, sec. 203, Ill. Rev. Stat. 1937. This statute makes the affidavit prima facie evidence that such notice was given.

140/ McConnell v. Jones, 332 Ill. 620, 164 N.E. 186 (1929).

141/ See Chicago v. Collin, 316 Ill. 104, 113, 146 N.E. 741, 745 (1925).

142/ The precept is issued by the county court after the judgment of sale is rendered, and is the authority under which the sale is made. It is the same as a writ of execution under an ordinary judgment, Pitkin v. Yaw, 13 Ill. 251 (1851).

It was held at one time that production of the precept was unnecessary under the statute, Ransom v. Henderson, 114 Ill. 528, 4 N.E. 141 (1886). Although this case has never been expressly overruled, it was stated as dictum in Chicago v. Collin, supra., that the precept must be shown. The latter case cites Gilbreath v. Dilday, 152 Ill. 207, 38 N.E. 572 (1894), and Gage v. Nichols, 135 Ill. 128, 25 N.E. 672 (1890), as authority for this and other matters. The Gage case does not involve the question, and in the Gilbreath case, the absence of the precept

(Continued)

United States or this state," he shall have 2 years after the removal of the disability to bring an action.

Seven-year statute of limitations under chapter 83, section 4. 146/ Under certain circumstances the holder of an invalid tax title might be protected from attack within a shorter period. Thus, under ch. 83, sec. 4, if he is in possession "by actual residence and has a connected title . . . deducible of record . . . from any public officer or other person authorized to sell such land for the non-payment of taxes, . . ." (*Italics added*) no action may be brought to recover the lands from him after 7 years.

The statute has been limited by the courts on the basis of the phrases italicized. Mere possession of the land without actual residence upon it is insufficient to claim the benefit of the statute. 147/ Although it was stated in an early case that "the title contemplated (by ch. 83, sec. 4) can mean nothing more than such title as is evidenced by a deed in proper form, and duly executed by one of the officers or persons named in the act, as the source with which the person relying upon it is required to connect himself by a regular chain of conveyances," 148/ subsequent decisions overruled this interpretation and held that the tax title holder must set up a "prima facie title." 149/ A prima facie title requires that the judgment of sale and precept be introduced in evidence as well as the affidavit of notice of redemption. 150/ Presumably, any defect apparent on the face of any of these instruments or the tax deed, 151/ would prevent the holder of the

was not an essential ground of the decision. Quere: Is the Ransom case still the rule?

143/ Ch. 83, sec. 1, Ill. Rev. Stat. 1937.

144/ Under ch. 83, sec. 2, Ill. Rev. Stat. 1937.

145/ Ch. 83, sec. 9, Ill. Rev. Stat. 1937.

146/ Ill. Rev. Stat. 1937.

147/ Manternach v. Studd, 230 Ill. 356, 82 N.E. 829 (1907).

148/ Irving v. Brownell, 11 Ill. 402, 415 (1849).

149/ Woodward v. Blanchard, 16 Ill. 424 (1855), as interpreted by Elston v. Kennicott, 46 Ill. 187 (1867). These cases and subsequent ones proceed upon the theory that the word "authorized" in the statute requires the tax title holder to prove the authority of "the public officer or person" to sell the land. This seems to be rather a strained construction. For a discussion of how Illinois statutes designed to protect tax titles have been crippled by court interpretations, see Baker, Tax Delinquency - Legal Aspects, 23 Ill. L. R. 159, 167 (1933).

150/ Elston v. Kennicott, 46 Ill. 187 (1867), involves judgment and precept; Burton v. Perry, 146 Ill. 71, 122, 34 N.E. 60, 74 (1893), involves affidavit of notice of redemption.

151/ Party in possession under a tax deed void on its face is not protected by the statute. Moore v. Brown, 52 U.S. 414, 13 L. Ed. 751 (1850).

tax title from claiming the benefit of the statute. It is thus seen that the actual protection offered the holder of an invalid tax title under this statute is not great, and is probably less than was intended by the General Assembly.

Seven-year statute of limitations under chapter 83, section 6. 152/ Another 7-year statute of limitations provides, "Every person in the actual possession of lands . . . under claim and color of title, made in good faith, and who shall, for seven successive years, continue in such possession, and shall also, during said time, pay all taxes legally assessed on such lands, . . . shall be hold and adjudged to be the legal owner of said lands . . . to the extent and according to the purpose of his or her paper title . . ." 153/ The phrase, "claim and color of title," has been construed to include a tax deed regular on its face. 154/ If the tax title holder has acted in "good faith," he is entitled to be protected under the statute. 155/ Further, the courts presume he has acted in good faith and require evidence of an intent to deceive, mislead, or defraud, to overcome the presumption. Even if he actually knows of existing claims, liens or legal defects in his title, this does not necessarily show his bad faith. 156/ The 7-year period of the statute runs from the day the first tax is paid (after possession is acquired), even though the tax was due before that date. 157/

This statute of limitations would permit the holder of a defective tax title, whose deed was regular on its face, to take possession of the lands, pay taxes for 7 years, and obtain a good fee simple title were it not for the existence of other statutes giving persons under disabilities broad rights of redemption. Chapter 120, section 196, 158/ was referred to above in the discussion of redemption. Under its provisions, lands of a minor heir, idiot or insane person that are sold for taxes may be redeemed at any time by such persons or by anyone on their behalf before the expiration of one year after their disability is removed. Larger redemption costs than usual are required of them, however.

Another statute 159/ provides that this 7-year limitation statute (ch. 83, sec. 6) does not apply to lands owned by the United States or the State, school and seminary lands, or to lands held for any

152/ Ill. Rev. Stat. 1937.

153/ Ch. 83, sec. 6, Ill. Rev. Stat. 1937.

154/ Holloway v. Clarke, 27 Ill. 483 (1861); approved in Walker v. Converse, 143 Ill. 622, 36 N.E. 202 (1894).

155/ Milliken v. Marlin, 66 Ill. 13 (1872), the judgment of tax sale was defective and void but tax title holder was protected.

156/ See discussion in Simpson v. Manson, 345 Ill. 543, 553, 178 N.E. 250, 254 (1932).

157/ Morrison v. Norman, 47 Ill. 477 (1868); DeProft v. Heydecker, 297 Ill. 541, 131 N.E. 114 (1921).

158/ Ill. Rev. Stat. 1937.

159/ Ch. 83, sec. 8, Ill. Rev. Stat. 1937.

public purpose. Neither does it apply to lands where the adverse title (adverse to the tax title holder, for purposes of this discussion) is held by a person who is insane, imprisoned, under 21 years of age, 160/ or outside the United States, "and" employed by the United States or the State of Illinois. 161/ The persons exempted by the act may commence an action to recover the lands within 3 years of the removal of their disability. 162/

Seven-year statute of limitations under chapter 83, section 7. 163/ This is a third 7-year statute of limitations that may apply to tax titles. It relates to unoccupied land only, and protects any person to the extent and according to the purport of his paper title, who in good faith, under color of title, pays all taxes on the land for 7 successive years; 164/ provided that another person with a better paper title does not pay the taxes for any one year during the 7-year period. Any such payment prevents the statute from applying.

The interpretations of "good faith," "color of title," and the time when the statute begins to run are the same as were stated above. The courts have held, however, that in order for the bar of this statute to become complete, the holder of a tax title (sufficient to constitute the required "color of title") must not only pay 7 successive years taxes, but must also take possession of the land after the end of the 7-year period 165/ and before the owner of the true title takes possession or begins an action attacking the tax title. 166/ Chapter 83, section 8, 167/ exempting lands owned by the United States, the State, minors, insane persons, etc., described above in connection with ch. 83, sec. 6, also applies to this act, and requires in addition that a tender of all taxes paid on the land plus interest at 12 percent, must be made to the person who paid the taxes under color of title by the party seeking to regain the land.

Supplementary Tax-Collection Procedures

Foreclosure of the tax lien of the State

Foreclosure of the tax lien of the State is another means of collecting delinquent taxes, and is not a part of the procedure of judg-

160/ Eighteen years for women, Davis v. Hall, 92 Ill. 35 (1879).

161/ The statute also expressly exempts lands owned by married women. It was held in Castner v. Walrod, 83 Ill. 171 (1876) that the married woman's act of 1861 removed that exemption, although it has never been removed from the text of the statute.

162/ See Hodgen v. Henrichsen, 85 Ill. 259 (1877), for an example of the application of the statute to minors.

163/ Ill. Rev. Stat. 1937.

164/ Redemption from forfeitures or purchasing at tax sales is not paying taxes under this statute. Robertson v. Bachmann, 352 Ill. 291, 185 N.E. 618 (1933).

165/ Woods v. Glos, 257 Ill. 125, 100 N.E. 516 (1913).

166/ Stalford v. Goldring, 197 Ill. 156, 64 N.E. 395 (1902), true owner took possession; Woods v. Glos, 257 Ill. 125, 100 N.E. 516 (1913), true owner commenced action.

167/ Ill. Rev. Stat. 1937.

ment, tax sale, etc. The process rests upon a portion of ch. 120, sec. 238, 168/ providing:

" . . . which lien /the tax lien of the State/ may be foreclosed in equity in any court of competent jurisdiction in the name of the People of the State of Illinois, whenever the taxes for two or more years, upon the same description of property, shall have been forfeited to the State, and may be sold under the order of the court by the person having authority to receive State and county taxes, with the same notice to interested parties and right of redemption from said sale, as is now provided by law, and in conformity with sections (4) and (5) of Article IX of the Constitution of this State." (The constitutional provisions referred to require a judgment of a court of record prior to the sale of land for taxes, at least a two year redemption period following such sale, and notice of the expiration of the redemption period to be given owners, interested parties, and occupants.)

Outline of foreclosure procedure. Foreclosure of the tax lien is an optional method of collecting delinquent taxes if the collector has been unable to sell at the annual tax sales described above. After the land has been forfeited for 2 years' taxes, the foreclosure suit may be commenced by the county in the name of the State for the benefit of the various taxing bodies interested. If the suit is successful, the court orders the land to be sold to the highest bidder, who holds it subject to redemption for 2 years before he can obtain a deed. He must also give notice of expiration of the redemption period as a condition of obtaining the deed. Some of the problems involved in the procedure are discussed below.

Parties who must be made defendants. The cost and complexity of a foreclosure proceeding would be greatly increased if all parties holding interests in the land were required to be made defendants and served with summons. The Illinois Supreme Court enlarged the practical utility of the proceeding when it held that only the person liable for the tax, who is usually the owner in possession, need be made a defendant. 169/

Defects in prior proceedings as a defense to the foreclosure. It will be noted that the statute, in effect, prohibits a foreclosure except when the land has been forfeited for 2 years' taxes. 170/ The meaning of this provision is not clear and has created considerable controversy. It was early held that it did not require forfeiture of 2 years'

168/ Ill. Rev. Stat. 1937.

169/ People v. Weber, 164 Ill. 412, 45 N.E. 723 (1896).

170/ Held a condition precedent to the commencement of the foreclosure action in People v. Henckler, 137 Ill. 530, 27 N.E. 602 (1891).

taxes in 2 separate years, but that 1 forfeiture for 2 years' taxes was sufficient. 171/ The main problem, however, has been how far the statute permits the defending landowner to attack the validity of the forfeitures and thus defeat the action. This is clearly a technical defense having nothing to do with the merits of the taxes or the foreclosure. The decision of People v. Straus 172/ seems to point towards a liberal interpretation that limits such defenses except where the record indicates on its face that the necessary forfeitures are void ab initio; 173/ and the decisions generally state that mere "irregularities or omissions" in the proceedings prior to forfeiture, even though they would invalidate a tax deed, are not available as a defense. 174/ The narrow field covered by "irregularities and omissions" is indicated by the fact that it does not include any jurisdictional defects, or those upon which the judgment of sale may be collaterally attacked. 175/ A wide range of technical defenses is thus available to the delinquent landowner, against whose land the State attempts to foreclose its tax lien. Defense may also be made upon any ground tending to show that no tax lien exists; such as that the taxes were paid, that the land was sold to a purchaser at the tax sale and was not forfeited, 176/ etc.

Foreclosure sale and purchasers at the sale. A foreclosure sale is not the same as a tax sale and follows a different procedure. The statutes relating to tax sales do not apply, and the sale follows the usual practice when foreclosing liens of various kinds. An important distinction is that the land is sold to the highest bidder, and any excess received over the amount due is paid to the landowner. 177/ Although the question cannot be considered definitely settled, the county may apparently purchase at the foreclosure sale in its capacity of tax collecting agent for the various taxing bodies, 178/ and presumably obtain title to the land if it is not redeemed. County purchases are likely to be limited to those instances when private bidders offer less than the amount due; the county then buys in order to protect itself against loss. Private parties may also purchase at the sale. It is not

171/ People v. Weber, 164 Ill. 412, 45 N.E. 723 (1896).

172/ 355 Ill. 640, 139 N.E. 877 (1934).

173/ Cf. People v. Henckler, 137 Ill. 530, 27 N.E. 602 (1891), distinguished in People v. Straus, which states the forfeitures must be valid, and holds one invalid because the certificate of the clerk, required by ch. 120, sec. 132, Ill. Rev. Stat. 1937, had a scrawled seal instead of the official court seal.

174/ Biggins v. People, 106 Ill. 270 (1883); Hammond v. People, 169 Ill. 545, 48 N.E. 573 (1897).

175/ Pp. 15 et seq. state the major grounds of collateral attack. Although the above statement is not express in People v. Miller, 339 Ill. 573, 171 N.E. 672 (1930), the decision proceeds upon the theory that a successful collateral attack on the judgment of sale upon which the requisite forfeitures are based would defeat the foreclosure of the tax lien. It follows that jurisdictional defects elsewhere than in the judgment proceeding would also be defenses.

176/ Sale to a purchaser discharges the lien. See p. 20.

clear whether the State auditor is required to bid at such sales or not, although he has not done so in practice. 179/

Redemption from the foreclosure sale, and the title obtained through foreclosure. The party purchasing at the foreclosure sale obtains a certificate of purchase but must wait 2 years, during which the landowner may redeem, before he can obtain a deed. He must also give the notice of expiration of the redemption period required by ch. 120, sec. 202, 180/ but need not make the affidavit that notice was given, described above in connection with the ordinary collection procedure. 181/ Although it is not necessary for the purchaser at the foreclosure sale to appear before the court at the end of the redemption period and ask it to determine that the notice of redemption was legally sufficient and order a deed issued, he usually does so since it strengthens his chances of obtaining a sound title. 182/ The deed is then issued by the county clerk.

A title created under a foreclosure proceeding is much more likely to be valid than one obtained through the judgment of sale, etc., in the county court since the only ground upon which the decree of foreclosure and the final order authorizing the issuance of a deed can be collaterally attacked is that the court had no jurisdiction. 183/ Another advantage is that the title holder need not begin a separate court action to obtain possession of the land, but upon proper request will be put in possession by the equity court. 184/ Although no court decision has been found determining whether the deed obtained under this procedure is a tax deed or not, it seems probable that it is not, as the phrase is used in the reconveyance statute and others discussed above.

Action "in personam" to collect delinquent taxes

A third method of collecting delinquent real estate taxes is a suit against the person who owned the land on April first of the year

177/ People v. Cant, 260 Ill. 497, 103 N.E. 232 (1913), discusses the sale procedure.

178/ People v. Straus, 355 Ill. 640, 189 Ill. 877 (1934) holds that the landowner cannot object to a purchase by the county, but does not decide whether other taxing bodies or the State may object.

179/ See ch. 120, sec. 249, Ill. Rev. Stat. 1937, outlined on p. 35. The statute applies only when real estate is "levied" upon to satisfy a "judgment" in favor of the State. Is the decree rendered in the foreclosure action a "judgment," and is the land "levied" upon within the meaning of the statute?

180/ Ill. Rev. Stat. 1937.

181/ Clark v. Zaleski, 253 Ill. 63, 97 N.E. 272 (1912).

182/ Ibid.

183/ Ibid.

184/ Hammond v. People, 178 Ill. 503, 53 N.E. 308 (1899).

the taxes were levied. The action is authorized by a statute 185/ which permits the county to sue in the name of the State for all the delinquent taxes, and also permits each taxing body to sue separately for its portion if it wishes. If the county does not act, individual taxing bodies are thus free to start an action in their own behalf. In general, any defenses may be offered in such a suit that could be offered to the collector's application for judgment in the county court; 186/ and irregularities in the forfeiture proceedings that would render a tax deed invalid will not prevent judgment. 187/

The effect of the judgment, which includes penalties, interest, and costs, 188/ is perhaps the most important item in the use of this method of tax collection. In general, it has the same status as a judgment obtained on a promissory note, that is, it may be satisfied by a sheriff's sale of any property of the judgment debtor, and if real estate is sold its redemption is governed by the statutes relating to ordinary judgments, instead of those relating to the redemption from tax sales. 189/ The redemption period is only one year for the landowner, 190/ and the purchaser at the sheriff's sale may obtain a deed at any time within 5 years after the expiration of the redemption period. The lien of the judgment upon all lands of the judgment debtor exists for 7 years from the time it is rendered 191/ and does not take priority over existing liens. 192/ This means that when land is sold to satisfy the judgment, the proceeds of the sale are first applied to the payment of any liens, including mortgages, prior judgments, etc., existing at the time the judgment was rendered. Besides this difficulty, collection of the judgment is hindered by general statutes exempting certain property from execution sale, particularly the \$1,000 homestead exemption. 193/

In practice, this method of tax collection is not of great importance since if the landowner does not pay his taxes because of financial difficulties, it will probably be difficult to collect a judgment against him for the same reason. Further, the cost in relation to the amount of taxes involved and the uncertainty of collection may make it unwise to attempt such action.

A statute relating to the sale of land on execution in behalf of the State 194/ should be noted here since it undoubtedly applies to

185/ Ch. 120, sec. 215, Ill. Rev. Stat. 1937.

186/ Drainage Dist. v. Commissioners of Highway, 199 Ill. 132, 64 N.E. 1094 (1902).

187/ Sanderson v. Town of LaSalle, 117 Ill. 171, 7 N.E. 114 (1886).

188/ Carrington v. People, 195 Ill. 484, 63 N.E. 163 (1902).

189/ Langlois v. People, 212 Ill. 75, 72 N.E. 28 (1904).

190/ Ch. 77, sec. 18, Ill. Rev. Stat. 1937. Creditors of the owner may redeem during the following 3 months, however, under ch. 77, sec. 20.

191/ Ch. 77, sec. 1, Ill. Rev. Stat. 1937.

192/ Kepley v. Jansen, 107 Ill. 79 (1883).

193/ Ch. 52, secs. 1 - 21, Ill. Rev. Stat. 1937. Douthett v. Winter, 108 Ill. 330 (1884).

194/ Ch. 120, sec. 249, Ill. Rev. Stat. 1937.

sales of land to satisfy personal judgments for taxes. It makes it the duty of the officer conducting the sale to give the State auditor 20 days' notice, and to send him an abstract of title and a statement of the value of the land. Unless higher bidders appear, the auditor is under a duty to purchase enough of the land at the sale, at two-thirds of its value, to satisfy the judgment. If the land is not redeemed within the usual period, 195/ the auditor obtains a deed and the State has title to the property. 196/ This statute is seldom if ever complied with and should probably be repealed.

Tax receivership under the Skarda Act and its successor

A fourth means of collecting delinquent taxes is by receivership proceedings. 197/ An application for the appointment of a receiver may be made by the county or any taxing body at any time after the taxes have been delinquent for 6 months, but must be made in the collector's application for judgment or in a pending suit in which the court has jurisdiction of the land. If the court grants the application, the county collector is appointed receiver after at least 3 days' written notice to the landowner. 198/ As receiver, the collector has the duty of collecting any income the property may produce and applying it to the payment of delinquent taxes.

This is clearly a departure from the time-honored method of tax collection, and offers a means of securing taxes whenever the delinquent property produces an income. Its application has not been widespread, however, even in the urban territory for which it was apparently designed, although it has been tried upon farm property in Crawford County.

Summary of Statutory Provisions for Collection of Delinquent Taxes in Illinois

Judgment authorizing sale of land for taxes

The Illinois Constitution requires that the State obtain a judgment before it can sell land for delinquent taxes, and the General Assembly has enacted statutes to govern the details of the procedure. After taxes have become delinquent on September 1, the collector must publish a notice that he intends to apply to the county court for a judgment of sale, and that the lands will be sold pursuant to the judgment. A hearing is then held by the court, at which individual landowners may object to the proceedings as applied to their lands. If the court grants the objections, further steps must be taken to validate the proceedings as against those parcels, but all other tracts are

195/ One year for owners, and an additional 3 months for their creditors. Ch. 77, secs. 18 and 20, Ill. Rev. Stat. 1937.

196/ Ch. 120, sec. 251, Ill. Rev. Stat. 1937.

197/ Under ch. 120, sec. 238, Ill. Rev. Stat. 1937. A 1935 amendment succeeded and repealed the Skarda Act, Laws of 1933, p. 873.

198/ Quaere: Since an amendment to ch. 120, sec. 238, Ill. Rev. Stat. 1937 has been substituted for the Skarda Act, does ch. 53, sec. 38(a), still apply and prevent charges for court and sheriff costs?

ordered sold. The proceeding is a "blanket" one in which all delinquent lands are treated at once, thus decreasing costs and simplifying the procedure. Although the county court may strengthen the judgment by permitting amendments of the record to cure defects arising in the prior procedure, the judgment of sale is open to attack on many more grounds than the ordinary court judgment. This is largely a result of provisions of the statutes and court interpretations that have provided excessive protections for the landowner.

Sale of land for delinquent taxes

Five days before the sale, the collector mails a notice of sale to all owners whose land has not been forfeited for 2 successive years. He then brings the delinquent list up to date and is ready to proceed with the sale.

The land is offered to the bidder who will accept the lowest penalty rate, but no bid exceeding 12 percent is accepted. The purchaser does not acquire a true lien against the land, but merely acquires a right to obtain redemption payments or a tax deed if he complies with the conditions of the statutes. In practice, however, he is protected to about the same degree as if he actually held a lien.

When all the lands have been offered for sale, those not sold are "forfeited" to the State. The word "forfeited," as used in the Illinois Statutes, does not possess its ordinary meaning but merely means that the lands have been offered for sale and remain unsold. The State continues to retain its lien against the land but does not acquire any title, and the original owner may continue to use it without making any payments for taxes or rent, even though the land may be forfeited year after year.

Redemption of lands

When lands are sold to a tax purchaser, the owner must redeem within 2 years from the time of sale, or the purchaser may obtain a tax deed to the land and acquire its possession. No such fate awaits the man whose land has been forfeited, for he has an almost unlimited time within which to redeem -- at least 2 years after his land is subsequently sold to a tax purchaser or some supplementary remedy is commenced, such as a foreclosure of the lien of the State.

A similar difference exists in the amount of redemption penalties each type of owner must pay. When land is sold to a tax purchaser, the owner is required to pay, in addition to taxes and costs, the amount of the penalty bid if he redeems during the first 6 months following the sale, twice the penalty during the second 6 months, etc., up to four times the penalty during the fourth 6 months. After that, he need pay in addition only interest at 6 percent. It is seen that at the maximum rate he would pay a 48 percent penalty to redeem during the fourth 6 months following the sale. If the land is forfeited instead of sold, however, only a flat 12 percent charge is required for each forfeiture.

Tax deeds

If the tax purchaser desires to obtain a tax deed, he must carefully observe the provisions of the statutes -- he must pay all taxes and assessments levied upon the land before it is offered for sale; he must prepare a notice of expiration of the redemption period and have it personally served upon occupants of the land, the owner and other interested parties, or he must publish it in a newspaper if any of them cannot be located within the county; and he must also prepare an affidavit that the proper notice was given. His duties do not stop when he has obtained a deed, for he must file it within a year; and unless he pays all taxes for 7 successive years and either takes possession of the land or commences a court action to obtain possession within a year after he obtains his deed, the former owner may demand that the land be returned to him upon payment of a sum less than the usual redemption penalties. If the tax-deed holder begins an action to obtain possession, the court must necessarily determine the validity of his deed and thus settle the matter. But if the tax-deed holder obtains possession of the land without court action, the statutes of limitation may help cure minor defects in his title by preventing anyone from using them as grounds of attack after a certain time has elapsed.

In general, the 3 Illinois 7-year statutes of limitations are not very effective in this respect. In view of the various weaknesses in the judgment of sale and the many points where errors can arise in the proceedings prior and subsequent to the issuance of an Illinois tax deed, all such deeds must be viewed with suspicion.

Supplementary tax collection procedures

There are 4 methods, in addition to that of judgment and sale described above, by which the State may attempt to collect delinquent real property taxes: (1) it may foreclose its lien, (2) it may bring an action in personam, (3) it may establish a tax receivership of the property, or (4) it may sell it to the highest bidder, without regard to the amount of delinquent taxes, upon the certification of certain county officials that the delinquency exceeds the value of the land. Of these, the first 3 are seldom effective against rural property, since the first 2 are expensive and the third will not apply unless the property produces an income.

The first remedy, foreclosure of the lien of the State (created on April 1 of the year preceding that when taxes become due), proceeds against the land and results in a fairly good title in the purchaser at the sale, although the action does possess certain practical disadvantages. Perhaps the most important of these are that it cannot be begun until the land has been twice forfeited; that separate actions must be brought against the tract of each landowner; and that the statutes have been interpreted by the courts in a way which permits landowners to defend the action on a good many technical grounds immaterial to its merits. If the State is victorious, the land is sold to the highest bidder and any surplus over the amount due is paid to the landowner.

The purchaser must then hold the land during a 2-year redemption period and give the usual notice of expiration of redemption before he can obtain a deed.

The second remedy, the action in personam, is like an ordinary action on a promissory note and proceeds against the landowner in much the same manner. The judgment obtained by the State in this proceeding may be collected out of any property of the landowner, including his personalty, but has no priority over other indebtedness of the landowner and cannot reach property that is exempt from execution under the ordinary judgment. In other words, it has the same status as the familiar court judgment.

The third remedy, a tax receivership, may be requested by the collector when he applies for judgment in the usual judgment and sale proceeding, and if granted, enables him to collect any income produced by the property and to apply it upon the delinquent taxes.

The fourth procedure cannot properly be called a supplementary remedy since it is not a means of collecting taxes in full, but merely affords a method of realizing a part of the total bad debt.

ADMINISTRATION OF DELINQUENT TAX COLLECTION

Any burden created by the complexities of Illinois statutes relating to the collection of real property taxes would devolve, for the most part, upon the county tax collectors charged with their administration. In order to determine the existence and extent of such a burden, as well as to estimate its magnitude, an investigation was made in the spring of 1937. Questionnaires relating to various steps of the procedures were sent to 101 Illinois county collectors, 199/ inquiring into the interpretation placed on the statutes and how the provisions were administered in practice. Sixty-four answers were received. Although some variation in practices was to be expected, that shown by the returns was far greater than anticipated, thus further indicating the need for a clarification of the laws and perhaps a need for a simplification of procedures. The answers to the questionnaire are summarized below, and those showing the greater variations are given individually in Table 2 at the end of this chapter.

Judgment of sale

The collector is by statute supposed to receive his books from the county clerk before December 31, and his failure to do so is likely to delay the entire collection schedule. To the first question, "Upon what date is the county clerk required to deliver the tax books to the

199/ Cook County was omitted

collector?", the answer in about half the instances was the end of the calendar year, but the replies included dates ranging from December 1 to April 1. It is probably true, however, that some of the collectors named the date of actual delivery instead of the statutory date.

The statute relating to installment payments prescribes 2 pairs of due dates: namely, June 1 and September 1, and February 1 and August 1. 200/ The former pair appear to be the correct dates, and practice seems to bear this out since all except 7 of the collectors named June 1 and September 1 in answer to the question, "When are real estate taxes due?" Other combinations were also listed, as: January and July, May and September, May and August, July and August, and December and June.

Before the date of the judgment and again before the sale, the collector must prepare the delinquent list. In response to the question, "When is the delinquent list prepared?", only 8 collectors mentioned months other than September. This indicated considerable agreement in administrative practice in this particular.

The court may be petitioned for judgment after the prescribed notice has been given through publication. Although the statutes do not prescribe a date, answers to the question, "Upon what date do you petition the court for judgment and order for sale?" all named days in September or October.

Sale

At the time the questionnaire was circulated, the statutes required a registered letter to be sent to the owners of delinquent property informing them of the sale, unless their land had been twice forfeited. Nevertheless, 11 collectors replied in the negative to the question, "Do you notify delinquent taxpayers by registered letter prior to the date of sale?" One collector frankly stated, "No, too many," while another added, "Yes, postcards."

A statute requires that the tax sale be held on the Monday specified in the published notice of the collector's application for judgment. The question, "When is the tax sale held?", was answered in many cases by referring to a period of time running from the judgment. In other cases, the day was specified, October being the most frequent month mentioned, although September, November, and December were also listed. The statutes provide that the sale must continue until all parcels have been offered.

The question, "How many days does the tax sale usually last?", was answered by a range of days from 1 to 30. Out of the 56 replies to this particular question, 34 gave the length of the sale as 10 days or less. Complete agreement existed as to where the sale was held, and this also agrees with the statutory designation of the county court house.

It was asked, "Approximately how many tracts were offered at the last sale?" and "Approximately how many tracts were sold?" Only 43 collectors had records available or took time to answer this question fully. The number of tracts offered varied from 45,000 to 9, and those sold from 500 to 2. Two collectors replied that they sold all that was offered, while the county that offered 45,000 tracts sold approximately 100.

In response to the question, "Has the tax sale operated successfully in your county in recent years?" there were 31 "No" and 31 "Yes" answers, with one reply of "Fairly." The standard of success to which some tax collectors have become accustomed may be suggested by the reply of one collector that the tax sale operated effectively, although the return indicated a sale of only .1 of 1 percent of the tracts offered.

A further question was, "Do the towns, cities, school districts, or county ever buy tax certificates at the sale? If so, about what percentage is sold in this way?" In only 5 counties was this practice noted, and the only reply on percentage was 1 percent.

It was also asked, "about what percentage of the forfeited lands has no known owner?" Twenty-seven collectors said that none of the forfeited land in their counties had unknown owners, and other estimates ranged from one-eighth of 1 percent to a maximum of 50 percent. When certain tracts are known to have been forfeited year after year for over 50 years, it is not surprising that the county occasionally loses track of the owner.

Redemption

As to where back taxes must be paid on forfeited property, there was no general agreement, 30 replying at the office of the county treasurer, 11 at the office of the collector, and 18 at the office of the county clerk. However, since the treasurer and the collector are the same person in most counties, there may be less diversity in practice than is indicated by these figures.

It was inquired, "Is the property sold for taxes redeemed in your office (collector's), in the county clerk's office, or is the redemption money paid directly to the holder of the certificate?" With 3 exceptions all answered that it was the county clerk's office. It is also permissible for the redemptioner to pay the holder of the certificate, but only 1 collector mentioned this point. Another collector named the treasurer's office, and a third answered, "both."

"If a person other than the owner wishes to buy forfeited land, what must he pay?" was asked. The amounts stated varied from the taxes due, to sums that included taxes due, penalties, interest, and costs. This is not surprising in view of the ambiguity of the statute. 201/

It was inquired, "In normal times is the turnover of delinquent taxes rapid enough so that back taxes collected each year would largely offset current delinquency, thereby making sale of tax liens to private buyers unnecessary?" There was a fairly even division of answers, 32 replying "yes" and 30 replying "no." In this connection it was further inquired, "Do you favor the sale of tax liens to private buyers, or would you prefer that the county hold all liens during the redemption period and receive all the interest and penalties? (This assumes of course that all property will be sold outright at the end of the redemption period.)" Seventeen collectors preferred that the county hold such liens and 26 favored their sale to private purchasers. Then, "How long should the redemption period be if the county were to hold all tax liens as suggested above and sell the property outright at the end of the redemption period?" Answers ranged from 6 months to 5 years, with 2 and 3 years being the most frequently stated.

Tax deeds

Forty-one of the collectors answered that tax deeds were taken out promptly by the certificate holders, while others answered that they were not.

In a reply to the question, "How often, if ever, in your county have the owners of tax deeds forcibly dispossessed the original owners of the property?", 14 collectors stated that this had happened in their county. One collector had never heard of such a thing, and another said, "never while I have been collector." Perhaps public opinion has been such in some cases that tax-buyers have not dared to commence actions dispossessing former owners. It is, of course, impossible to eject the owner of forfeited lands, and collectors often allude contemptuously to forfeitures as a legal farce whereby owners are allowed to stay in possession and pay no taxes.

Supplementary tax collection procedures

The most interesting returns related to the enforcement of supplementary remedies by the taxing jurisdictions. It was inquired, "How often, if ever, have you enforced, through the State's Attorney, personal liability for real estate taxes on forfeited property?" Three collectors reported the use of this method, and 1 replied, "State's Attorney objects."

The next question was, "How often, if ever, have you foreclosed tax liens in equity when taxes for two or more years have been forfeited to the state?" Only 6 collectors have used this method, and of these 6, 4 indicated by their answer that it had only recently come into use. One individual replied, "Never, the cost is too great," perhaps voicing the unwritten objection of the majority.

The next question was, "How often, if ever, and with what success have you used tax receiverships against farm land?" Six replied that they had used this device; 1 answered that he had used it against city property; and another stated that he had used it as a threat. Of these

6, 3 reported success and 1 reported but little success.

Another question was, "How often, if ever, have you sold forfeited property to the highest bidder upon the certification of the county judge, county clerk, and county treasurer that taxes equal or exceed the actual value of the land?" Fifteen collectors answered that this method had been used, thus giving it first rank as a means of disposing of chronically delinquent lands.

An important aspect of this return lies not in the number of collectors who have failed to use these remedies, but in answers worded in many cases to imply that it would be poor policy to do so, and that the collector was unaware that such remedies existed. Several expressly said that they had never heard of some of them.

State records, etc.

There was an interesting response to the question whether the State should have a central record of property that has been "forfeited" to it. Only 16 collectors favored such a record. Two considerations may enter here: that of the extra work involved if the collector were required to prepare his part of the State record, and reluctance to have the State meddling in county affairs. One collector replied, "Not necessary," another said, "Can see no advantage in this," while a third answered, "Our county gets on o.k."

The last entry on the questionnaire was, "Any further comments you may have on desirable changes in tax collection procedure will be gratefully received." Only 20 collectors made any comment, and since their diversity prevents adequate summary, the reader is referred to Table 2. The collector who writes, "Can't find where end to redemption period," reflects the unending confusion that must face even those trained in the interpretation of statutes when they come to unravel the Revenue Act of Illinois.

Table 2. -- Returns from questionnaire of county collectors

: Co. :	Date co. :	Date :	Date court :	Percentage :
:	clerk to. :	delinquent :	petition for :	forfeited :
:	deliver :	list made :	judg. and sale :	lands with :
:	tax books :	:	:	no known :
:	to coll. :	:	:	owner :
:	:	:	:	:
: 1 :	:	Sept. 1 :	:	50% :
: 2 :	Feb. 1 :	Sept. :	Last of Sept. :	None :
: 3 :	Dec. 31 :	Sept. 1 :	1st Mon. Oct. :	None :
: 4 :	:	Oct. :	Sept. 28 :	None :
: 5 :	:	Sept. 10 :	Oct. :	None :
: 6 :	Jan. 1 :	Sept. :	1st Mon. Oct. :	1% :
: 7 :	Jan. 1 :	Sept. 15 :	1st Mon. Sept. :	Small :
: 8 :	Mar. 25 :	Sept. 10 :	:	15% :
: 9 :	Apr. 1 :	Sept. 1 :	:	Small :
: 10 :	Apr. 1 :	Sept. :	Sept. :	4% :

Table 2. - Returns from questionnaire of county collectors - Continued				
: Co.	: Date co.	: Date	: Date court	: Percentage
:	: clerk to	: delinquent	: petition for	: forfeited
:	: deliver	: list made	: judg. and sale	: lands with
:	: tax books	:	:	: no known
:	: to coll.	:	:	: owner
: 11	: Bef. 12/31	: Sept.	: 10 da. aft. adv.	: 10%
: 12	: Apr. 1	: Sept. 10	: Oct. 20	: 2%
: 13	:	: Sept.	: 14 da. bef. sale	: Below 1%
: 14	: Feb. 5-10	: Sept. 20	: Oct. 4	: 1%
: 15	: Dec. 31	: Sept. 15	: 1st Mon. Oct.	: None
: 16	: Mar. 1	: Sept. 1	: 1st wk. Oct.	: 1%
: 17	: Jan. 1	: Sept.	:	: None
: 18	: Jan. 1	: Sept. 1	: Oct. 24	: None
: 19	: Dec. 31	:	: 10 da. aft. adv.	: Small
: 20	:	: Sept. 1	: Sept. 28	: None
: 21	: Jan. 1	: Sept. 1	: Sept. 28	: None
: 22	:	: Sept. 15	: Oct. 10	: None
: 23	: Jan. 1	: Sept. 10	: Last Mon. Sept.	: None
: 24	: Bef. Dec. 1	: Sept. 15	: Sept. 27	: None
: 25	:	: Sept. 1	: Wk. bef. sale	: 10%
: 26	: Dec. 30	: Sept. 18	: Sept. 28	: None
: 27	: Mar. 1	: Sept. 1	: Sept. 1	:
: 28	: Dec. 31	: Sept. 1	: 15 da. aft. judg.	: None
: 29	:	: Oct. 1	: Oct. 13	: None
: 30	: Dec. 31	: Sept.	: No set date	: None
: 31	: Dec. 31	: Sept. 1	:	: .01%
: 32	: Dec. 20	: Sept.	: Sept. 12	:
: 33	: Jan. 1	: Sept. 2	: "By Statute"	:
: 34	:	: Sept.	: Last Mon. Sept.	:
: 35	: When comp.	:	: Last Mon. Sept.	: None
: 36	:	: Sept. 10	: Sept. 22	: None
: 37	:	:	:	:
: 38	: On or bef.	: Af. 9/1	: At least 10 da.	: None
:	: Dec. 1	:	: aft. judg.	:
: 39	: Dec. 1	: 3rd Mon. Sep.	: 10 da. aft. adv.	: None
: 40	:	: Sept. 15	: Sept. 27	:
: 41	: Mar. 1	: Sept.	: 10 da. aft. judg.	: Small
: 42	: Dec. 30	: Sept. 17	: 10 da. aft. adv.	: Small
: 43	:	: Sept. 2	: Last Mon. Sept.	: 25%
: 44	: Jan. 1	: Sept. 1	: Any date	: None
: 45	:	: Sept.	: End of Sept.	: 2-4 pcs.
: 46	: Dec. 31	: Sept. 15	: Sept. 30	: $\frac{1}{2}$ of 1%
: 47	: Dec. 31	: Sept.	: 5 da. bef. sale	: 1%
: 48	: Dec. 31	: Oct.	: Sept.	: $\frac{1}{2}$ of 1%
: 49	: Jan. 1	: Oct. 1	: Oct. 1	: None
: 50	: Mar. 1	: Sept. 15	: 10 da. bef. sale	: Small

Table 2. - Returns from questionnaire of county collectors - Continued

: Co.	: Date co.	: Date	: Date court	: Percentage	:
:	: clerk to	: delinquent	: petition for	: forfeited	:
:	: deliver	: list made	: judg. and sale	: lands with	:
:	: tax books	:	:	: no known	:
:	: to coll.	:	:	: owner	:
: 51	: Jan. 1	: Aug. 31	: 10 da. aft. adv.	: 1%	:
: 52	:	: Oct. 1	:	: 10%	:
: 53	: Soon as	: Sept. 17	: Oct. 12	:	:
:	: comp.	:	:	:	:
: 54	: Dec. 10	: Sept. 15	: Sept. 20	:	:
: 55	: Jan. 15	: Sept.	: No set date	:	:
: 56	:	: Sept. 1	: Oct.	: None	:
: 57	:	:	: Oct. 1	: None	:
: 58	: Dec. 1	: Sept.	: Nov.	: None	:
: 59	: No set	: Sept. 15	: Oct. 1	: None	:
:	: date	:	:	:	:
: 60	: Feb.	: Sept. 15	: 3rd Mon. Sept.	: None	:
: 61	: Jan. 15	: Oct.	: Soon aft. adv.	: Small	:
: 62	: Ff. Jan. 1	: Sept. 15	: 1st Mon. Oct.	: 1/8 of 1%	:
: 63	:	: Aug. to Oct.	: 14 da. aft. adv.	: Little	:
: 64	: Feb.	: Sept.	: Last Mon. Sept.	: 1%	:

: Co.	: Date of tax sale	: Number	: Amount buyers	: Do purch.	:
:	:	: of days	: other than owners	: obtain	:
:	:	: tax	: must pay for	: tax deeds	:
:	:	: sale	: forfeited lands	: promptly	:
:	:	: lasts	:	: after	:
:	:	:	:	: redemp.	:
:	:	:	:	: period	:
: 1	: Oct. 15	: 1	:	:	:
: 2	: Oct. 15	: 10	:	: Yes	:
: 3	: 3rd Mon. Oct.	: 14	: At next sale, same:	: No	:
:	:	:	: as owner	:	:
: 4	: Oct.	: 10	: Full amount	: Yes	:
: 5	: Oct.	: 20	: Taxes only	: Yes	:
: 6	: 2nd Mon. Oct.	: 21	: 12% pen.	: Yes	:
: 7	: Wk. aft. judg.	: 2	: 12% pen., tax	: Yes	:
: 8	: Wk. aft. judg.	: 10	: Price, int., fee	: No	:
: 9	: Oct.	: 1	:	: Yes	:
: 10	: Oct.	: 7	: Tax, int., costs	: Yes	:
: 11	: Oct.	: 10 da.	: 12%	: Yes	:
: 12	: Oct. 20	: 15 da.	: Int., costs, adv.	:	:
: 13	: Oct. 2nd or 3rd	: 15-20	: Pen., int., costs	: Yes	:
:	: Mon.	:	:	:	:
: 14	: Oct. 11	: 3	: Tax, pen.	: No	:
: 15	: Oct. 10	: 10	: Tax, int., fees	: Yes	:
: 16	: 2nd Mon.	: 21	: Tax, cost, pen.	: Yes	:
: 17	: Oct. 1	:	: Tax, 12% pen.	:	:
: 18	: Oct. 24	: 10	: All back tax	: Yes	:
: 19	: 15 da. aft. judg.	:	: 12% pen.	: Yes	:
: 20	: Mon. ff. judg.	: 1	: Back tax, cost	: Yes	:

Table 2. - Returns from questionnaire of county collectors - Continued

: Co. :	Date of tax sale	: Number	: Amount buyers	: Do purch.	:
:	:	: of days	: other than owners	: obtain	:
:	:	: tax	: must pay for	: tax deeds	:
:	:	: sale	: forfeited lands	: promptly	:
:	:	: lasts	:	: after	:
:	:	:	:	: redemp.	:
:	:	:	:	: period	:
: 21 :	Oct.	: 6	: Same as owner	: Yes	:
: 22 :	Oct. 10	:	: Tax, int., costs	: Yes	:
: 23 :	Last Oct.	: 15	: Back tax, pen.	: No	:
: 24 :	Oct. 11	: 1	: Back tax, pen.	: Generally	:
: 25 :	Oct. 15	: 7	:	: No	:
: 26 :	Oct. 5	: 21	: Tax, int., pen.	: Yes	:
: 27 :	Oct. 1	: 16	: Tax, pen.	: No	:
: 28 :	1st Mon. Oct.	:	: Back tax, int.	: Yes	:
: 29 :	Oct. 25	: 12	: Gen'l taxes, pen.	: No	:
: 30 :	Oct.	: 7	: Pen., costs	: No	:
: 31 :	3rd Mon. Sept.	: 2	: Tax, int., pen.	: No	:
: 32 :	2nd Mon. Oct.	:	:	: Yes	:
: 33 :	:	: 7-10	: Taxes, costs, pen.	: Yes	:
: 34 :	Oct.	: 14 da.	: Tax, pen., costs	: Yes	:
: 35 :	Oct.	: 14	: All taxes	: Most	:
:	:	:	:	: always	:
: 36 :	Oct. 5	: 14	: Tax, costs, int.	: No	:
: 37 :	:	: 7	:	: Yes	:
: 38 :	Any Mon. aft.	: 7	: Tax, costs, int.	: No	:
:	: judg.	:	:	:	:
: 39 :	10 da. aft. adv.	: 15	: Adv., pen.	: Yes	:
: 40 :	Oct. 13	: 30	: Total amt.	: No	:
: 41 :	Wk. aft. judg.	: 30	: Same as owner	: Yes	:
: 42 :	Mon. aft. judg.	: 1	: Tax, pen., costs	: No	:
: 43 :	1st Mon. Oct.	: 14	: Tax, pen., fees	: No	:
: 44 :	Oct. 12	: Any no.	:	:	:
: 45 :	Oct.	: 14-21	: Tax plus costs	: Yes	:
: 46 :	Oct. 12	: 1	: Tax, pen.	: Yes	:
: 47 :	2nd Mon. Oct.	: 7	: Tax, pen., costs	: Yes	:
: 48 :	10 da. aft. judg.	:	: Tax, pen., int.	: No	:
: 49 :	Oct. 25	: 2	: Tax, costs, int.	: Yes	:
: 50 :	Oct.	: 1	: Tax, pen.	: Yes	:
: 51 :	Mon. aft. judg.	: 3	: Costs, pen.	: Yes	:
: 52 :	Dec. 1	: 7	: Taxes	: Usually	:
: 53 :	Oct. 26, 1936	: 7	: Same as owner	: No	:
: 54 :	:	:	:	: Yes	:
: 55 :	Oct.	: 14	: 12% pen.	: Yes	:
: 56 :	Oct. 20	: 5	: Tax, int., costs	: No	:
: 57 :	Oct. 11	: 1	: No buyers	: Yes	:
: 58 :	Nov.	: 14	: Tax, pen.	: Yes	:
: 59 :	1st Wk. Nov.	: 3	: Tax, costs	: Yes	:
: 60 :	Oct. 11	: 10	: Cost, pen., tax	: Yes	:
: 61 :	:	: 10	: Tax, costs	: No	:
: 62 :	2nd Mon. Oct.	: 6-30	: Tax, cost, int.	: No	:
: 63 :	10 da. aft. judg.	:	: Tax, costs	: Yes	:
: 64 :	Mon. aft. judg.	: 7	: Tax, int., pen.	: Yes	:

Table 2. - Returns from questionnaire of county collectors - Continued

Co.	Sale of	Has sale	Number	Number	Do redemp.
	forfeited	been a	tracts	tracts	of delinq.
	land when	success	offered	sold	taxes off-
	taxes exceed	of late	at 1936	at 1936	set the cur-
	its value	years	sale	sale	rent delin-
					quency
1	Once	Yes		500	Yes
2	None	Yes	440	202	Yes
3	None	No	1,000	8	Yes, back
					taxes
					\$46,000
					ffs. \$50,000
4	None	Yes	30	25	Yes
5	None	Yes	300	200	No
6	None	Yes	300	50	
7	None	Yes	300	200	No
8	Many; best	Yes		All	No
	of all			offered	
9	None	Fairly	2,500	147	
10	None	No	800	28	No
11	None	No	2,092	137	No
12	None	No			
13	None	Yes	300	200	No
14	Every 4 to	No	800	170	No
	6 years				
15	None	No	625	10	Yes
16	Once	No	1,200	17	No
17		No			No
18	One in last	Yes	700	100	Yes
	10 years				
19	Just	Yes			
	beginning				
20	None	No		15	No
21	None	Yes			Yes
22	Several	Yes	100	25	
23	9 pcs. prop.	No	9	9	Yes
24	None	Yes	1,800	137	Yes
25	None	Yes	300	25	Yes
26	Once	No	6,055	70	No
27	None	No		20	Yes
28	None	No	200	25	Yes
29	None	No			
30	Never	No	439	57	Yes
31	None	Yes	876	312	Yes
32	Several	No	45,000	100	No
33	5 in last 29	Yes	10,000	365	No
	months				
34	None	Yes		All	Yes
35	None	Yes		300-400	Yes
36	None	No			
37	None	No		Very few	
38	Never	No	8,000	25	Yes
39	None	Yes	1,200	50	Yes
40		No		6	

Table 2. - Returns from questionnaire of county collectors - Continued

Co.	Sale of forfeited land when taxes exceed its value	Has sale been a success of late years	Number tracts offered at 1936 sale	Number tracts sold at 1936 sale	Do redemp. of delinq. taxes off- set the cur- rent delin- quency
41	Once	Had few	5,000	35	Yes
42	None	No		5%	Yes
43	None	No	2,000	10	Yes
44		Yes			
45	None	Yes			Yes
46	None yet; beginning	Yes	40	31	Yes
47	25 lots	Yes	2,000	2	No
48	None	No	850	20	No
49	None	Yes	200	137	Yes
50	None	No		30	Yes
51	None	No	1,970	20	No
52	None	No		15-20	No
53	None	Yes			
54	Once	No	400	12	No
55	Once	Yes	300	150	Yes
56	None	Yes	300	133	No
57	None	No	50	25	Yes
58	Once	No	2,000	30	Yes
59	None	Yes	350	25	Yes
60	None	Yes	40	30	
61	None	Yes	75	25	Yes
62		No	15,000	60	No
63	None	Yes			Yes
64	None	No	506	13	Yes

Co.	Prefer priv. buyer or Co. hold lien during redemp. period	Length of redemp. period if Co. holds all liens	Further comments on change in collection procedure
1	County		Collection successful here
2	Private buyers		
3	Private		Receivership law should apply to city and vil- lage property
4	No	2 years	
5	Private buyers		
6	Private buyers	1 year	Clarifying foreclosure
7	Private buyers		
8			Situation very bad
9	County	3 years	
10	County	2 years	

Table 2. - Returns from questionnaire of county collectors - Continued

Co.	Prefer priv. buyer or Co. hold lien during redemp. period	Length of redemp. period if Co. holds all liens	Further comments on change in collection procedure
11	County	3-4 years	
12			Legis. on computing costs, etc., needed
13	Private buyers		
14			
15	County		
16	County	18 months	Use distress warrants instead
17	Private buyers		
18	Private buyers	2 years	Need good title
19	Private buyers		
20		5 years	
21	Private buyers		Treas. sell personalty;
22			More safe tax deed
23	Private buyers	5 years	
24			
25	Private buyers		
26	County	6 months	Installment dates changed
27			
28		3 years	Forfeited yr. after yr.
29	Yes	3 years	
30	County	3 years	
31	Private buyers	2 years	
32		4 years	
33	Private	2 years	
34	Private buyers		
35			"Can't find where end to redemption period"
36			
37			
38	County	2 years	
39	County	3 years	
40			
41	Private buyers	3 yr. maximum	Sheriff should handle pers. taxes
42	County	3-5 years	
43	County	15 months	
44	Private buyers	2 years	
45			Quite satisfactory
46	Either		Most delinq. is pers. prop.
47			
48	Private buyers		
49	Private buyers	5 years	
50	County		

Table 2. - Returns from questionnaire of county collectors - Continued

Co.	Prefer priv. buyer or Co. hold lien during redemp. period	Length of redemp. period if Co. holds all liens	Further comments on change in collection procedure
51			
52		2-3 years	Could sell if could get possession
53	Private		
54	County	2 years	Personal lia. and equity lien are jokes
55		2 years	
56	Private buyers		
57	County	2 years	Tax sales not ef- fective
58	County	3 years	
59	County	3 years	
60	Private buyer		
61			Drainage tax problem here
62	Private buyers		Tax buyers get title in 2 yrs. Higher rate on forfeited taxes
63	Private buyer		
64	Private buyer	4 years	

ANALYSIS OF THE TAX COLLECTION STATUTES OF ILLINOIS

Clarity of the Statutes

An evaluation of tax collection statutes may be approached from 3 main viewpoints -- that of the public as a whole, that of the individual taxpayer, and that of the purchasers at a tax sale. Despite their conflicting interests, each of these parties would agree that tax collection statutes should be clear and concise in order that everyone concerned may know his respective rights and obligations.

The subject of real property taxation is confusing enough without the abetment of complicated or ambiguous statutes. That confusion exists in the statutes setting out the Illinois tax collection procedure has been illustrated to some extent by the description given in the discussion of Statutory Provisions for the Collection of Delinquent Taxes in Illinois. The reader is referred to the laws themselves for further evidence. The undesirability of this situation is recognized by county officials charged with the administration of the laws as well as by Illinois lawyers and other students of the problem.

Despite 2 attempts to codify the revenue laws, nothing concrete has been accomplished in this particular. In 1933 a codification was prepared by the Legislative Reference Bureau and introduced in the

General Assembly as H.B. 187. It passed the House but died in the Senate due to opposition from Cook County authorities who felt that it would further complicate an already acute Chicago tax situation. 202/ The Illinois Bar Association revised the 1933 bill, and it was introduced in the 1937 General Assembly as H.B. 627, but failed to reach the floor despite the fact that its drafters attempted merely to state existing law.

Interests of Public as a Whole, of Taxpayers,
and of Tax Purchasers

The public, as represented by the State and various taxing units, is vitally interested in both the collection of delinquent taxes and the use and disposition of the lands concerned. Whether taxing units are large or small, they must have revenue to meet their budgets; and this consideration is consequently the primary one, although it is tempered by a recognition of the cumulative effect of heavy delinquency in increasing burdens upon property as well as hampering the performance of desired services.

The general property tax usually constitutes the major flexible source of local funds and if an even flow of revenue is not assured, undesirable results may follow. Among them are unhealthy and costly borrowing, curtailment of essential services, and increasing levies forced on a diminishing effective tax base as a result of lessened willingness or ability of remaining taxpayers to pay. This invites a damaging cycle of delinquency, adversely affecting the flow of revenue.

The individual taxpayer does not assume the obligation of tax payments in the manner that he assumes his private debts, since taxes are imposed upon him in a more or less involuntary fashion. If he fails to pay them, he may be deprived of his property. If he is able to pay, but will not, no injustice may be done by such deprivation; but in many cases taxes become delinquent through inadvertence or because of a financial inability to pay. In such cases, a conflict arises between the revenue necessities of the taxing units and the hardship created by offering the taxpayer's property for sale at a fraction of its value and imposing penalties upon its redemption. The former must prevail if governmental services are to continue (unless other sources of revenue are tapped). While the base of taxation is the real estate, the revenue is ordinarily paid out of the owner's income. Since the real estate, particularly in rural areas, represents to a large degree a means of securing that income, the present and future tax-paying ability of the owner will be seriously impaired if the collection procedure places too great artificial barriers in the path towards redemption. Conversely, if it is too easy, the owner will prefer to keep his tax money. Ideal collection laws must thus steer a middle course that combines efficient collection with protection of landowners.

202/ Robert S. Cushman, A Codified Illinois Revenue Act, 18 Chicago Bar Record 7 (Nov. 1936).

Another conflict of interests exists concerning those lands that are chronically delinquent. Their revenue-producing potentialities are often negligible, and they are in fact not a part of the effective tax base. Continued resale, if resale occurs at all, brings renewed delinquency. Perhaps such lands would be best administered by a public agency, and if submarginal or even clearly marginal, should be retired from their present uses in order to promote the greatest public interest. This does not mean, however, that the interest of the public in its taxpaying capacity will obviously coincide with its interest in the conservational use of land.

The revenue considerations must often be proved to be non-existent or insubstantial before the taxpayer viewpoint will give way to the land utilization viewpoint. Accordingly, in order to serve the public interest as a whole, a careful balance must be maintained. It is impossible, however, for the State to take any extensive proprietary action with respect to changing the use or preventing the misuse of chronically delinquent lands unless it obtains a tax title that is reasonably safe from attack.

Under the existing Illinois laws, tax purchasers theoretically supply the taxing units with revenue when landowners permit their taxes to become delinquent. A conflict is thus created between the interests of the taxpayer and the purchaser, in that the latter (usually a speculator) desires an investment with a maximum return, while the former is interested in keeping his land and reducing the penalties he must pay when he is forced to let his taxes become delinquent.

Steps in the Tax Collection Procedure.

The validity of the tax title, whether obtained by a tax purchaser or by the State (Illinois does not obtain title to tax-delinquent land), necessarily depends upon the diligence with which the statutory steps in the collection procedure have been followed. If the procedure is complicated and involved, the chances for the entrance of errors that will invalidate the resultant tax deed are increased. The material presented earlier has indicated that the Illinois system is encumbered with technicalities and uncertainties, although it contains many desirable features. It should be noted that these encumbrances have been created with the best of motives -- to protect the taxpayer against the unjust loss of his property. Under modern conditions, however, the protections are so numerous that they unduly hinder the collection of revenue, and thus cast an added tax burden upon the conscientious taxpayer whom they are supposed to protect.

At this point it should be recognized that although the assessment procedure is beyond the scope of this study, it is frequently as important, if not more important, to the taxpayer than the subsequent enforcement and collection measures. An impartial scientific system of assessment is a fundamental guarantee against inequitable tax charges, besides tending to encourage collections.

Judgment

The first major step in the collection procedure is the judgment of sale obtained by the collector pursuant to the mandate of the constitution that forbids a tax sale of property except under an order or judgment of a court of record. The landowner is notified of the application for judgment by a published notice, and may subsequently appear before the court and contest the matter if he wishes. 203/ The proceeding appears to have 2 purposes: to protect the landowner by accorling him a hearing before selling his land; and to cure some of the defects that have crept into the prior administrative procedure. At present, however, not only is the landowner afforded a hearing but, if he deliberately does not attend, he is permitted subsequently to raise objections upon a number of technical grounds that should have been settled in the judgment hearing. 204/ This is an unhealthy state of affairs.

The judgment obtained under the present statutes is extremely weak when compared with the ordinary court judgment or with the decree obtained when the lien of the State is foreclosed, since it may be collaterally attacked on grounds to which other judgments are impervious. Some of these grounds result from statutes requiring the collector to perform certain specified acts with a degree of precision out of proportion to their importance. 205/ And others are a result of a strained court construction of the statute purporting to prohibit all collateral attacks upon the judgment except where the tax was paid or the real estate was not liable to the tax or assessment. As was pointed out previously, the Illinois court has held that if the judgment exceeds its proper amount, even by only a few cents, it is entirely void and may be attacked under the provisions of the statute. 206/ Since clerical errors do arise in any business, it is necessary to look upon all Illinois tax judgments with suspicion until they have been checked for excesses.

As neither the taxing units nor the taxpayers benefit from this state of affairs, it is suggested that the statutes be amended to give these judgments, in so far as possible, the same protection from collateral attack as other judgments possess, except perhaps where the taxes were actually paid or where the land was exempt from taxation under the exemption statutes.

Tax sale

Notice of sale. The second major step in the collection procedure in Illinois is the tax sale. A notice of the approaching sale must be mailed to each landowner unless the land has been delinquent

203/ Page 12 et seq.

204/ See discussion of the judgment in discussion of Statutory Provisions, etc.

205/ Page 14 et seq.

206/ Page 16 et seq.

for more than 2 years. 207/ Although this is an added protection to the landowner, it actually tells him nothing in addition to the published notice of the collector's application for judgment, except the amount of the delinquency.

When it is remembered that failure to give this notice probably invalidates the tax sale and any subsequent steps that may be taken in the collection procedure, and that 10 of the counties answering the questionnaire did not give the notice at all, its utility may well be doubted. But it should be noted that at the time the questionnaire was answered the statute required notice to be sent by registered mail, and has since been amended to permit the use of ordinary mail. The change will reduce expenses and may bring about a better compliance. Since the notice appears to serve no useful purpose, it is suggested that it be abolished or at least made clearly discretionary so that failure to send it cannot affect the validity of the tax sale.

Tax purchasers and redemption penalties. Although the theory of the law is that competition between purchasers will drive penalties below the statutory maximum to the benefit of the landowners, practice has seldom borne out the theory. The landowner is usually forced to pay a large sum to redeem his land, amounting to 48 percent or more of the original delinquency if the redemption is made after 2 years and at the maximum penalty rate. That is a rather heavy penalty, and during the depression of the early 1930's it proved so onerous that if concessions had not been made, the result would have been virtual confiscation of delinquent properties. On the other hand, penalties could be so low that they would encourage delinquency by making it more profitable for the taxpayer to pay the penalty than to forego the use of his money or pay interest on a loan to replace it.

Perhaps the major evils of both extremes could be avoided by the imposition of a high initial penalty plus smaller additional penalties for delayed payments. For example, the maximum penalty for redemption during the first 6 months might be 12 percent as at present, plus an additional 1 percent a month during the balance of the redemption period. (Tax purchasers bidding less than 12 percent would receive only a proportionate share of this amount.) This system would tend to encourage prompt payment by those who were able, and prevent cumulative penalties from becoming an excessive burden upon those forced to defer payment.

A statutory reduction in the maximum penalties allowable without a compensating increase in the inducements to tax purchasers might, however, discourage them and impair their services in supplying immediate tax revenue when landowners do not pay on time. The most obvious way to evade this possibility is to increase the security behind their investment through strengthening tax titles.

This security is made up of 2 items: the chance that the landowner will redeem, and the value of the land to the purchaser. The

latter is considerably less than the cash value of the land because of the expenditures in money, time, and vigilance that are required between the tax sale and the time the purchaser realizes on his investment through a sale of the land. To enumerate the more important: he must pay all taxes before their due date; he must give a proper notice of expiration of redemption; he must obtain a tax deed within a year after the end of the redemption period; and within the next year he must obtain possession of the land or institute a court action to obtain possession.

These steps will satisfy the statutory requirements, but he must go further and establish a merchantable title before he can dispose of the land. Success in an action to obtain possession will frequently have this result, but he must quiet title through a separate court action if that is insufficient, or if he obtained possession without suit. Even then his troubles are not over, for he must find a buyer -- sometimes no easy task. Neither the trouble and expense involved in perfecting title and disposing of the land, nor the chances that title can or cannot be established, can be adequately forecast in advance. Thus the value of the land to the tax purchaser is somewhat of an unknown quantity. As the chances that the owner will redeem are also largely unknown, the net result is that the amount of security behind the purchaser's investment is distinctly speculative.

It is seen that strengthening tax titles to a point where they would be merchantable would remove the major speculative factors from this security. If titles were so strengthened, redemption penalties might then be reduced without fear of impairing the services of tax purchasers.

Necessity of the tax sale. An interesting question is whether it is necessary to have the present type of sale at all. If the taxing units would set up a reserve for "bad debts" just as do private concerns, it would be unnecessary to sell delinquent property, at least until after the expiration of the redemption period. This proposal has the merit of forcing the taxing units to take cognizance of the fact that they will be faced with an absence of revenue from property that is never redeemed. At present they not only take no notice of the usual delinquency existing from year to year, but are forced to place on the rolls all the chronically delinquent land from which they well know they will receive no income. Revenues are thus officially anticipated from sources which are actually known to be effectively non-existent because customarily delinquent.

Distinct from the chronically delinquent land, which will seldom be sold at tax sale or redeemed if sold, is that which sells readily and will soon be redeemed. The latter is the kind that tax purchasers choose in order to reap the penalties, while the former is left to the State. There is no persuasive reason why the State and its taxing units should not receive the income now going to support speculators who tend to desert their trade in times of depression when the State most needs their aid. The extent of this desertion is indicated by table 3, showing the percentage of rural lands offered for sale for the first time

during the years 1929-33 that was purchased by tax buyers in 15 Illinois counties. It will be noted that although the bulk of the land offered in 1929 was sold, little more than a quarter of the new offerings were sold in 1933.

Table 3. -- Percentage of rural lands offered for sale for the first time that was purchased by tax buyers in 15 Illinois counties 208/

Sale Year	Number of tracts	Acres	General taxes
	%	%	%
1929 <u>1/</u>	64.5	76.9	86.1
1930	73.1	79.7	76.8
1931	37.3	43.1	55.3
1932	26.6	30.5	37.9
1933	26.0	28.1	37.2

1/ The 1929 figures represent all rural properties delinquent on the sale held that year. The carry-over from previous years is not known.

It would, of course, be necessary to set up a reserve fund in order to put into operation a plan whereby tax sales would be obviated. The original cost of setting up the fund would be the annual sum now supplied by tax purchasers. This cost would be repaid as rapidly as interest and penalties were received, and the only loss to the taxing jurisdiction would be the tax upon land that would not have been redeemed if sold to a tax purchaser, and of course, the State would have a lien against that. It should be pointed out, however, that this suggestion will not solve the problems created by the mass of chronically forfeited lands.

Redemption

Redemption periods on lands sold at tax sale. After the judgment and tax sale, there is a redemption period of 2 years before the tax purchaser can acquire a tax deed. This redemption period is limited by the constitution to a minimum of 2 years, which appears to be satisfactory except in times of severe stress such as were experienced during the depression of the early 1930's. Perhaps legislative concessions can be made during such periods, if necessary.

Redemption periods on forfeited lands. The 2-year redemption period is effective only as to lands sold to tax purchasers, and does

208/ Calculated from data in "Tax Delinquency of Rural Real Estate in 15 Illinois Counties, 1928-33," Bureau of Agricultural Economics (mimeographed). The 15 counties are Champaign, Christian, DeKalb, Fulton, Henry, Jackson, Jo Daviess, Johnson, Livingston, Marion, Pike, Pope, St. Clair, Washington, and White.

not apply to those forfeited to the State. Forfeited lands may be discussed in 3 classes: those which continue to be forfeited year after year, those against which the lien of the State is foreclosed, and those subsequently sold to tax purchasers. Of these 3 classes, the first is undoubtedly the largest. The small size of the second is shown by the fact that only 6 of the 60 counties reporting upon the question had used the foreclosure device at all, and even then only on rare occasions. Data are not available on the magnitude of the third class, but it is undoubtedly small because speculating tax purchasers would not be inclined to buy at subsequent sales if they had previously passed over the tract when the price was less.

Lands forfeited year after year carry an unlimited redemption period, except as terminated by an action to foreclose the lien of the State, or by certification of the county judge, clerk, and treasurer that the taxes exceed the value of the land. After such certification, the land is sold to the highest bidder, who must hold it for another redemption period of 2 years before he can obtain a tax deed. The practical necessity or justice of adding such a 2-year period to the many years during which the owner could have redeemed is not apparent -- even though the procedure may permit him to redeem his land for the amount of the sale after certification, an amount inevitably less than the taxes he should have paid. 209/

Although land of this type is likely to be of the poorer grades, the owner may use it during this long period and retain its income without paying any rent or taxes. As he suspects that he will probably lose it eventually, he may be tempted to feel no responsibility to the land itself and permit erosion and other factors to destroy its productive capacity beyond reasonable repair. When it is remembered that this class of land constitutes the largest class of forfeited property, the importance of the situation is manifest.

The second class of forfeited lands is that against which the State forecloses its lien. Despite its present small size, data previously presented indicate that it may well increase in the future. In no case can the lien be foreclosed until after the land has been twice forfeited. A 2-year redemption period must then follow the foreclosure sale, and the effective result is that the landowner always has 3 years, and frequently much longer, in which to redeem. The third class of forfeited lands is that which is forfeited before being acquired by tax purchasers. The landowner then has the ordinary 2-year redemption period besides the time between forfeiture and purchase.

It is thus seen that in practice the 2-year redemption period applies only to lands sold to tax purchasers at the first sale and that, when lands are forfeited, the redemption period may vary from 2 to any number of years. Thus a landowner may let his taxes become

209/ See footnote 94/.

delinquent and gamble on the length of time he will be permitted to retain the use of the land before he is dispossessed. If the land is of a poorer grade or otherwise unattractive to tax purchasers, he has a good chance of using it indefinitely.

Special privileges of redemption. A statute permits minors, idiots, and insane persons to redeem at any time within a year following the removal of their disabilities. Since it is difficult to determine whether a previous owner was of this class and since such disabilities may last many years, some doubt as to the sufficiency of a tax title must exist as long as this statute is in effect.

It is suggested that such titles be strengthened by a statute requiring that when such persons redeem they must reimburse the tax-title owner for the reasonable value of any improvements he may have placed on the land. However, it would probably be better to abolish this extraordinary redemption privilege altogether.

Tax deeds

Notice of expiration of the redemption period. Before the tax purchaser can obtain a tax deed, he must give the notice of expiration of redemption required by the constitution and statutes. The constitution merely states: "And the General Assembly shall provide by law for reasonable notice to be given to owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire: Provided, that occupants shall in all cases be served with personal notice before the time of redemption expires." 210/ The General Assembly has gone far, however, in adding to the constitutional requirements by providing that personal notice must be served upon all occupants of the land, upon the person in whose name the land was taxed, and on the owners or parties interested in the land, including mortgagees or trustees of record if they can be found within the county. The General Assembly has also provided that the notice must state the date of the purchase, the person in whose name the land was taxed, the description of the property, the amount of the year's taxes for which the land was sold, and the date of expiration of the redemption period.

If it is desired to entice tax purchasers by simplifying the path to a valid tax title, it would be well to decrease the rigor of this statute, and the expense it necessitates. This might be accomplished by requiring personal service upon the occupant of the land only, and service by publication upon all others. Perhaps it would be advisable to require also that a copy of the published notice be mailed to parties other than occupants. As the constitution merely requires that the notice state the fact that the land has been sold and the date the redemption period will expire, the other details now demanded by the statute might be abolished in the interests of simplification. These changes in the present procedure would

decrease the possibilities of technical error invalidating tax deeds, but would retain all the essential protections to which the landowner is entitled.

Reconveyance statute. After the purchaser receives his tax deed, he must obtain possession of the land within 1 year and pay all taxes for 7 consecutive years, or the former owner may force a reconveyance of the land. 211/ Although this statute is probably desirable in so far as it forces the tax deed holder to try the validity of his deed in a court action to obtain possession, or else to obtain possession with the consent of the landowner, it does not appear to serve any useful purpose in requiring the payment of 7 years' taxes. It undoubtedly acts in some measure to deter tax purchasers from appearing at tax sales, and is thus opposed to the existing policy of relying upon them for immediate revenue. On the other hand, it was probably intended to protect the landowner. It would seem, however, that this extra protection is superfluous as the landowner has already received ample safeguards in the prior procedure.

In view of this consideration and the fact that the statute serves to complicate an already intricate mass of law relating to tax titles, it is suggested that the requirement for 7 consecutive years payment of taxes be stricken.

Tax deeds as evidence. A defect in the statutes contributing materially to weaken the strength of tax deeds is that the statutes do not go far enough 212/ toward making such deeds prima facie evidence of matters essential to their validity. In their present state, the deed is not prima facie evidence of the validity of the judgment of sale, nor of the sufficiency of the notice of expiration of redemption, nor of the existence or sufficiency of the affidavit of redemption. Although it is undoubtedly true that the General Assembly has no power to make tax deeds conclusive evidence of all matters essential to their validity, it is generally accepted that it can make them prima facie evidence of such matters. It is suggested that such a statute be enacted in Illinois to apply to every tax deed regular on its face.

Statutes of limitations. Another legislative device to strengthen tax deeds is a statute of limitations barring actions attacking the validity of the deeds after a certain number of years. Although Illinois is equipped with a formidable battery of 7-year statutes of limitation, 213/ their effectiveness has been somewhat limited by narrow court decisions. Perhaps they could be amended to give an adequate protection to the tax deed holder.

Supplementary tax collection procedures

At present there are 3 supplementary remedies which the State

211/ Page 26 and following pages.

212/ Pp. 27 and 28.

213/ P. 29 et seq.

may invoke to collect delinquent taxes in full when no tax purchaser appears. These are the action in personam, the tax receivership, and the action in rem to foreclose the lien of the State.

Action in personam. Although the effectiveness of the in personam action is limited to those cases where the taxpayer has property that can be reached by an ordinary judgment, 214/ it is undoubtedly of value and should be retained upon the statute books, but it does not merit extensive discussion.

Tax receiverships. Tax receiverships present another way in which the taxing units, through the administration of the county, may collect delinquent revenue. The original act (the so-called Skarda Act) presumed that to establish a receivership there must be at least a contractual rent, if not an economic rent coming from the property, since there would be no point in establishing a receivership if it did not produce an income. As applied to farm lands, the value of a tax receivership would be largely alternative, in the nature of a threat to those who can pay but refuse to do so. Furthermore, it has the disadvantage of imposing additional duties upon the county treasurer. On the whole, however, the tax receivership is a desirable device to aid the collection of revenue, since it is particularly effective against urban property.

Foreclosure in rem of the lien of the State. Although the existing action to foreclose the lien of the State results in as sound a title as may be reasonably expected from any form of tax delinquency proceedings, it is burdened by certain encumbrances that seriously limit its practical usefulness. The most important defect in the foreclosure statute is that it permits the landowner to raise technical defenses that have no bearing upon the real merits of the case. This results from the provision that the foreclosure action can be brought only after 2 forfeitures have occurred, thus permitting attacks on the validity of the forfeitures. 215/

There seems to be no valid reason why the action should not be brought sooner than this; but reserving this objection for the time being, the statute should at least be amended to provide that the action may be brought whenever the tax lien of the State remains unsatisfied for 2 years (or some other definite period) from the time it attaches to the land. Such a provision would eliminate many of the technical defenses permitted by the present statutes and would carry out the same intent.

It may be presumed, in view of the silence of the statute, that the State must foreclose its lien against each tract of land separately or at most against lands owned by one person. Such procedure is expensive. If the State could join any number of parcels and their owners within a county in a blanket proceeding, as it does in the collector's application for judgment, costs could be cut and the remedy

214/ See previous discussion on page 35.

215/ Discussed at page 32.

could be more readily invoked when necessary. It is suggested that the statute be amended to permit such a blanket foreclosure.

A State title to tax-delinquent lands

The State of Illinois does not obtain title to tax-delinquent land under present laws. Forfeited lands enter upon an indefinite redemption period with the result that the State is without an adequate remedy to enforce its tax claims against them. The most obvious solution to this situation is a law, such as the great number of States now possess, whereby title to such lands may be acquired by the State after a redemption period and under procedures reasonably safeguarding the landowner's interests.

In addition to the benefits that would accrue to the tax collection procedure through an adequate law of this type, the State would be in a position to promote a better use of such land. After considering alternative possibilities, it could deal with it in a manner calculated to produce the most beneficial results. Some of it might be peculiarly suited to forestry or wildlife or other purposes of the Illinois Department of Conservation, and thus might be transferred to that agency for administration. Some of it might fit into land programs cooperatively conducted by Federal and State agencies. Other tracts might be super-marginal, and hence returned to the tax rolls by sales to private purchasers.

Although such a program would cause a loss of revenue to local taxing units, as the land otherwise might either be redeemed or sold to the highest bidder when taxes exceeded its value, these losses would be small and might be more than offset by gains resulting from the sale of land that the State did not wish to retain and from the public benefits resulting from the program.

The provisions of a law vesting title in the State are not immediately apparent, although they should undoubtedly establish as simple a mechanism as possible. Many States have laws and procedures established by which the State acquires a tax title; but they may not be copied without modification, since they are not designed to fit the Illinois Constitution, and since, furthermore, they are not always as simple and certain as they might be. Two possibilities appear to be best adapted to the Illinois situation. The first involves changing the proceeding upon the collector's application for judgment to produce essentially the result now obtained by the action foreclosing the lien of the State. The second would place the State in relatively the same position as that of tax purchasers at present.

An amended collector's judgment proceeding. When the action foreclosing the lien of the State is compared with the judgment of sale action brought by the collector, some interesting features are observed. The former lacks the low cost per tract advantage possessed by the judgment of sale action with its published summons instead of personal service upon the landowner, and its blanket procedure joining all delinquent tracts in one action. On the other hand, the lien

action results in a decree that is as free from collateral attack as any court decree or judgment can be, and possesses the further advantage that a hearing can be held after the end of the redemption period in which the court reviews the sufficiency of the proceedings relating to the notice of expiration of redemption, and orders a tax deed issued if everything is found to be in order. Further, when the purchaser at the sale following the foreclosure of the lien cannot obtain possession of the land by peaceable means, he will be put in possession by the court without the necessity of bringing an expensive new action for the purpose, such as is required of the tax purchaser at the usual tax sale.

If these advantages of the lien action could be brought to the judgment of sale action, not only could the State obtain a tax title with reasonable ease, but the entire collection proceedings would be simplified and strengthened. Perhaps this could be accomplished by a statutory enlargement of the powers of the county court to permit the foreclosure of the lien of the State in that court in place of the judgment of sale proceeding as it is now conducted. (The Illinois Constitution gives the county court general jurisdiction over the subject of taxation; and hence there probably would be no constitutional objection on that score.)

The first step in such an enlarged judgment proceeding would be, as at present, the publication of the notice of application for judgment. The notice would act as a summons and would contain the description of the land, the owner's name, if known, and a notice that upon a certain day the collector would apply to the county court for a judgment foreclosing the lien of the State. The statute should provide that the omission or the incorrect spelling of the owner's name would not affect the validity of the notice. The landowners who lose their land on tax titles because of the misspelling or omission of their names from such a notice are probably few and far between since the notice also contains the description of their land.

The court hearing would follow the notice. As the action would be to foreclose the lien of the State, the court should have all the powers that can be given it to adequately consider defenses and to cure defects in the previous procedure, including those that are now possessed by the equity court in the present action of foreclosure. As it would be unfair to a landowner to make the judgment conclusive against him if he had really paid his taxes or his land was tax exempt, the existing statute permitting collateral attacks when the taxes were actually paid should be retained. That part of the statute allowing such attacks when the land is not liable to the tax should either be repealed or amended to make it clear that it applies only to lands exempt from taxation under the exemption statutes.

If the suggestion previously made, that the tax sale be abolished, is followed, the judgment would not order a sale, but would declare the land forfeited to the State subject to redemption within the normal redemption period. If the present method of selling to tax purchasers is followed, the judgment would order the lands offered for

sale. The sale might be conducted in either of 2 ways. The land might, as at present, be offered to the person who will pay the delinquent taxes and accept the lowest redemption penalties; or it might be offered to the highest bidder and the surplus above the amount due paid to the owner. The latter method is that now followed when the State forecloses its lien, and is probably preferable since only 1 sale would be held and the landowner would receive the sum bid less the delinquent taxes. Should no bid equal the amount due, the land would be considered sold to the State for that amount. The normal redemption period of 2 years would follow the sale, or if no sale were held, it would follow the judgment. During this time, the landowner or other interested parties could redeem by paying the amount the land sold for plus the penalties, whether it was sold to a private purchaser or to the State.

Before becoming entitled to receive a deed, the tax purchaser or the State, as the case may be, should be required to give the constitutional notice of expiration of redemption. In the previous discussion of the point it was suggested that the present statutes be made more lenient in their requirement as to contents and manner of service of the notice. This suggestion is particularly pertinent when the State is taking title, in order to decrease the expense of the proceedings. The notice of expiration of redemption might also serve an additional purpose by notifying the landowners that an application for a tax deed would be made to the court on a certain day. When the State or a tax purchaser holds several certificates, there seems to be no reason why each should not be permitted to make his application in a blanket proceeding joining all lands within the jurisdiction of the court to which he requests tax deeds, and so reduce his expenses. At the court hearing, the landowner or anyone else interested in the land would have an opportunity to appear and offer objections to the issuance of the deed. If the court found the prior proceedings in order and no one appeared, or if the objections presented were considered insufficient, the court would proceed to order the deed executed. As to obtaining possession of the land, the order of the court might also require the person in possession to yield to the tax deed holder. When the State is the tax deed holder, perhaps the order could purport to place the State in constructive possession, regardless of the actual possession of the land, or perhaps a statute could itself accomplish the same end.

The present collector's judgment proceeding. A second alternative by which the State can obtain title to tax-delinquent lands would involve its assuming the position with respect to forfeited lands that is now held by tax purchasers with respect to their lands. This could be accomplished by a statutory amendment providing that lands not sold at tax sale would be considered sold to the State. The State would then enjoy the same rights and privileges as private tax purchasers and would be subject to approximately the same obligations. Perhaps, however, exceptions should be made in favor of the State in the requirements of the reconveyance statute and the payment of subsequent taxes. This implies, of course, that the State must comply with the constitutional requirements and statutes relating to the notice of expiration of redemption.

This procedure has the advantage of requiring only slight changes in existing statutes, but is subject to the disadvantage that it will not produce as high a percentage of valid titles in the State as the preceding suggestion. Whether or not this objection is material as applied to any particular parcel of real estate depends upon whether the State retains title. The State is immune from suit by virtue of its sovereignty and its constitution, which provides in Art. IV, sec. 26, "The state of Illinois shall never be made defendant in any court of law or equity." Any title held by it is thus free from attack, regardless of its validity, unless the State itself commences an action in which it is put in issue. A transfer of that title to an individual would, of course, expose it to attack. Since a large proportion of the property reverting to the State probably would be resold, it is important that a merchantable title be obtained. Perhaps this could be accomplished by a statutory provision that at the expiration of the redemption period the State's title should be absolute and beyond dispute. Such a statute might or might not be constitutional. 216/ In view of the opportunities given the landowner to contest the tax in the county court and to redeem from sale, however, it may be contended that such a statute would not violate due process of law.

Means of protecting the State's title. As the State receives no protection from its immunity to suit if it is forced to commence an action involving the validity of its title, additional methods of protection appear desirable. Without them it cannot develop or improve lands through reforestation or otherwise except under fear of subsequently losing them. Perhaps this danger could be minimized by a statute requiring that every court judgment or decree setting aside a State tax title should be granted only upon condition that the successful party reimburse the State for the reasonable value of any improvements placed upon the land, and pay a sum approximately equal to the taxes that would have been due during the period it was in the hands of the State and tax exempt.

Summary of an Analysis of Illinois Tax Collection Statutes

Although the Illinois tax collection procedure is not without merit in its general outline, it contains many unnecessary requirements that make it difficult to administer and that, if not followed exactly, may provide grounds upon which tax deeds may subsequently be attacked. This situation is complicated by an extraordinary confusion in the statutes. Expressions are frequently ambiguous and even conflicting. Attempts were made in 1933 and again in 1937 to clarify the statutes by codifying existing provisions, but without success.

There are many points at which the Illinois tax collection procedure may be improved. The most important is probably the establishment of some means whereby the State may acquire title to delinquent

216/ See Cooley, Taxation (4th ed. 1924) sec. 1350.

lands and thus end the present situation wherein land can be forfeited year after year without contributing any taxes despite its continued use by the delinquent owner. The following outline contains the suggestions made in the text of this section:

1. Judgment

The statutes might be amended to give the judgment of sale, as far as possible, the same protection against attacks that ordinary judgments have. (Discussed on page 53.)

2. Tax sale

(a) It might be advantageous either to abolish the mailed notice of sale or make its use clearly non-mandatory so that failure to send it would not invalidate tax deeds that might subsequently be issued. (Discussed on page 53.)

(b) The tax sale might be abolished entirely so that all penalties of redemption would accrue to the taxing units. (Discussed on page 55.)

3. Redemption

(a) The redemption period could well be retained at 2 years, but should be made effective on forfeited lands as well as on those sold at tax sale. (Discussed on page 56.)

(b) The long term penalties of redemption might be decreased by imposing a high penalty for the first 6 months and lesser penalties thereafter. (Discussed on page 54.)

(c) The special privileges of redemption for minors, insane, etc., might be abolished or made conditional upon a reimbursement of the tax title holder for the reasonable value of improvements placed on the property. (Discussed on page 58.)

4. Tax deeds

(a) The complicated requirements for the contents and service of a notice of expiration of redemption might well be reduced to the minimum required by the Illinois Constitution. (Discussed on page 58.)

(b) The requirement for the payment of 7 years' taxes might be removed from the reconveyance statute. (Discussed on page 59.)

(c) Tax deeds could be strengthened by a statute making them prima facie evidence of all facts essential to their validity. (Discussed on page 59.)

(d) Perhaps the statutes of limitation could be amended to give additional protection to tax deeds. (Discussed on page 59.)

5. Supplementary tax collection procedures

(a) The in personam and tax receivership remedies should be retained in essentially their present form. (Discussed on page 60.)

(b) If the suggestions below for giving the State a means of acquiring title are not followed, the statutes might be amended to permit the use of a "blanket" action to foreclose the lien of the State; but at all events they should be amended to prevent the use of technical defenses involving defects in prior forfeitures. (Discussed on page 60.)

6. A State title to tax-delinquent lands

(a) The State might obtain a reasonably valid title if the present judgment procedure were reformed to produce the effect now obtained through foreclosure of the lien of the State. (Discussed on page 61.)

(b) An alternative method would involve placing the State in approximately the position now held by tax purchasers. That is, all land not sold at tax sale would be considered sold to the State with the same privilege to obtain title as other tax purchasers possess. (Discussed on page 63.)

(c) The State's title might be protected by requiring anyone successfully defeating it to pay a sum approximately equal to the taxes that would have been levied had the title to the land not been held by the State, and to reimburse the State for the reasonable value of any improvements made. (Discussed on page 64.)

APPENDIX

HISTORY OF STATUTORY PROCEDURE TO COLLECT
DELINQUENT REAL PROPERTY TAXES

From the earliest days in Illinois the date at which taxes become due has been frequently changed. Usually on the due date penalties have attached to the delinquent taxes. In 1818 the penalty was 1 percent a day; 217/ but in 1823 this was reduced to 6 percent per annum. 218/ The sheriff was authorized to sell the land of residents on which the taxes were delinquent, after having given 40 days' notice of his intention. 219/ Until 1833 the State conducted the other tax sales, those of non-resident delinquents, but in that year turned this also over to the county 220/ -- an arrangement which has continued to date.

The redemption period was first set at 2 years, 221/ shortened in 1821 to 1 year, 222/ and lengthened again to 2 years in 1827, 223/ where it has remained. The amount of penalties which accrued after the sale of delinquent land has varied considerably. In 1812 redemption was made by paying double the amount of the purchase price. 224/ This was then cut to a 50 percent penalty in 1821, but the cost of advertising was added. 225/ Two years later the redemption penalty was back to 100 percent of the purchase price, 226/ in 1825 down to 50 percent, 227/ but in 1827 it was double the amount of taxes, interest and costs, plus subsequent taxes and interest thereon. 228/ Again it was reduced in 1833 to 50 percent of the amount paid for the delinquent taxes with 6 percent a year on the costs and subsequent taxes paid by the holder of the lien. 229/

Procedure was not explained in much detail; consequently the early cases were decided to a large degree on the basis of the common law. The new tax system of 1839 provided more specific regulation, introducing the least-land principle of bidding at tax sale (that is, the successful bidder was he who offered to take in return for the amount due the fewest number of acres in 1 long strip from the east side of the delinquent tract). 230/ The redemption period remained at 2 years, with penalties of double the amount for which the tract sold, plus interest at 6 percent on subsequent taxes and costs. 231/ The

- 217/ Laws 1817-1818, p. 41.
- 218/ Laws 1823, pp. 204 and 208.
- 219/ Laws 1812, p. 22.
- 220/ Laws 1832-1833, p. 528.
- 221/ Laws 1812, p. 25.
- 222/ Laws 1820-21, p. 182.
- 223/ R. Laws 1826-1827, p. 327.
- 224/ Laws 1812, p. 25.
- 225/ Laws 1820-1821, p. 182.
- 226/ Laws 1823, p. 205.
- 227/ Laws 1824-1825, p. 172.
- 228/ R. Laws 1826-1827, p. 327.
- 229/ R. Laws 1832-1833, p. 528.
- 230/ Laws 1839, p. 15.
- 231/ Laws 1839, p. 16.

period of redemption was extended for miners, 232/ and redemption permitted at any time for land forfeited to the State. 233/

The laws of 1872 still held to the least-land principle of bidding, 234/ but in 1895 this was changed to the present practice of bidding to accept the least flat percentage of the amount of the delinquent taxes as a penalty, the maximum being fixed at that time at 25 percent. 235/ The redemption penalty fixed under the law of 1895 was the penalty bid for the first 6 months, twice that for the next 6 months, three times the bid for the third 6 months, and four times the bid for the fourth 6 months. 236/

232/ Laws 1839, p. 16.
233/ Laws 1839, p. 17.
234/ Laws 1871-1872, p. 49.
235/ Laws 1895, p. 299.
236/ Ibid.

